SUPREME COURT OF THE UNITED STATES.

No. ~~375~~

ABEL STEARNS, CLAIMANT AND APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

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1 *Transcript of the proceedings in case No. 94.*

ABEL STEARNS, claimant,
vs.
THE UNITED STATES, defendants. } For "land at Mission Dolores."

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this ninth day of March, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

Index to proceedings before board of land commissioners.

The petition of Abel Stearns for "land at Mission Dolores," was presented and ordered to be filed and docketed with No. 94, and is as follows, to wit:

(Vide page 5 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *September* 27, 1852.

In case No. 94, Abel Stearns for a tract near the mission of San Francisco de Asis or Dolores, the deposition of Pio Pico, a witness in behalf of
4 the claimant, taken before Commissioner James Wilson, with document marked J. W. No. 1, was filed.

(Vide page 6 of this transcript.)

SAN FRANCISCO, *June* 7, 1853.

In the same case the deposition of Jose Matias Moreno, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed.

(Vide page 8 of this transcript.)

SAN FRANCISCO, *October* 11, 1853.

Case No. 94, on motion of the counsel for the claimant, was ordered to the foot of the docket.

SAN FRANCISCO, *June 8th*, 1854.

In the same case, the deposition of William Buckler, jun., a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed.

(Vide page 9 of this transcript.)

SAN FRANCISCO, *April* 10, 1854.

Case No. 94, on motion of the counsel for the claimant, with the
5 consent of the U. S. law agent, was ordered to be placed at the foot of the 2d-class cases on the trial docket.

SAN FRANCISCO, *October* 25, 1854.

In the same case, the deposition of W. R. Banham, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed.

(Vide page 12 of this transcript.)

SAN FRANCISCO, *November* 14, 1854.

Case No. 94, on motion of the counsel for the claimant, with the consent of the U. S. law agent, was ordered to be placed at the foot of the 3d-class cases on the trial docket.

In the same case, the counsel for the claimant filed the following affidavit, to wit:

(Vide page 25 of this transcript.)

SAN FRANCISCO, *November* 17, 1854.

In the same case, the deposition of J. B. Stuzennegger, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

(Vide page 16 of this transcript.)

SAN FRANCISCO, *December* 12, 1854.

6 Case No. 94 was submitted under the rule of 21st March, 1854.

SAN FRANCISCO, *January* 23*d*, 1855.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board rejecting the claim.

(Vide page 27 of this transcript.)

And the following order was made, to wit:

(Vide page 29 of this transcript.)

Petition.

To the honorable the commission to ascertain and settle private land claims in the State of California:

Abel Stearns, a citizen of said State, gives notice that he claims, by virtue of a grant from the Mexican nation, a tract of land therein situated in front of the mission building of San Francisco de Asis or Dolores, in the county of San Francisco, and containing six hundred varas square, measuring from and including the huerta or garden of said mission to beyond the tanyard of the same or till the said quantity of six hundred varas be completed. Said land was granted to Jose Andrade on the sixth day of
7 May, 1846, by Don Pio Pico, constitutional governor of the department of California, and as such authorized to make said grant. It was conveyed by said grantee to the claimant on the 9th day of August, 1846.

A copy of said grant and of said conveyance are herewith presented, marked A, and the originals will be produced and proved as shall be required.

The claimant relies on the documentary testimony above mentioned and on the documents relating to said grant existing in the archives of the former governments of California.

JONES, TOMPKINS & STRODE,
Attorneys for Claimants.

Filed in office March 9, 1852.
(Signed) GEO. FISHER, *Sec'y.*

8 *Dep. of Pio Pico.*

OFFICE OF THE BOARD OF COM'RS OF CALIFORNIA LAND CLAIMS,
Los Angeles, Sept. 27, 1852.

On this day, before James Wilson, one of the commissioners for ascertaining and settling private land claims in California, came Pio Pico, a witness produced in behalf of the claimant, Abel Stearns, whose petition is No. 94 on the docket of the board, and was duly sworn. His evidence being given in Spanish, was interpreted by the secretary.

The U. S. law agent was duly notified and attended.

Pio Pico, a witness offered by the claimant in the above-entitled cause, being duly sworn, testifies and says:

In the month of May, A. D. 1846, I was governor of California by the appointment of the supreme government of Mexico. The paper now exhibited to me was executed by me on the 2d page as governor of California. The paper is marked J. W. No. 1, depo. Pio Pico. The paper was executed at the time it purports to be executed, viz: on the 6th day of May, 1846.
9 The signature of Jose Maria Moreno, who signed said paper as sec'y, is his genuine signature. The said Moreno was then the acting sec'y to the government. The residence of Moreno is on San Diego, but he has recently been on a trip to Mazatlan, in Mexico, and I do not know as he has returned or where he is at present. It was customary to make out such papers on sealed paper, but when there was no sealed paper to be procured it could be done on other or common paper, which was good for that purpose when sealed paper could not be procured and that fact noticed on the paper itself. Upon examination of the signatures on the 4th page of the document now exhibited I say that I know the signatures of Leonardo Cota and Ignacia Coronel. They are their genuine signatures. I had the authority as governor to make the grant of the land mentioned in the said deed of grant.

Question by Mr. Greenhow for Geo. W. Cooby, esq., law agent.

I did not consider the lands which were granted in the above deed
10 as within the limits of any town at that time. I considered it as vacant lands, not within the limits of any town. I considered that the missions never had any limits, for no limits were ever assigned to them, therefore I considered the land as vacant land at the time of the aforesaid grant. I further say that I have no interest whatever in the land claimed.

PIO PICO.

Sept. 27th, 1852.

Sworn and subscribed before me.

JAMES WILSON, *Com'r.*

Filed in office Sept. 27, 1852.
(Signed) GEO. FISHER, *Secy.*

Dep. of Jose M. Moreno.

SAN FRANCISCO, *June* 7, 1853.

On this day, before Com'r Alpheus Felch, came Jose Matias Moreno, a witness on the part of Abel Stearns, claimant, petition No. 94, and was duly sworn, his evidence being interpreted by the secretary.
11 The U. S. associate law agent was notified and attended.

Questions by claimant.

Question 1. What is your name, age, and place of residence?

Answer. My name is Jose Matias Moreno; my age is thirty-five years; and my residence is in San Diego.

Question 2. Are you acquainted with the handwriting of Pio Pico, Leonardo Coto, Jose Andrade, Ignacio Coronel, and Manuel Euriques? If yea, examine the paper which is now shown to you, marked J. W. No. 1, annexed to the deposition of Pio Pico, taken before Commissioner James Wilson in this case, and say whether the signatures of the above-named persons wherever they occur in and upon said document are their true and genuine signatures.

Answer. I am acquainted with the handwritings of the several persons named in the above interrogatory. I have examined the document
12 exhibited and marked as above stated, and know their signatures to said document to be genuine. I have seen them all write on several occasions. My own handwriting also is attached to it. My signature thereto in two places is genuine. My signature and that of Pio Pico were written at the date of the instrument to which they are affixed.

Questions by Mr. Greenhow, law agent.

Do you know in whose handwriting the title on the said document is written?

Answer. I do not know in whose handwriting it is.

JOSE MATIAS MORENO.

Sworn to and subscribed before me this 7th day of June, 1853.

ALPHEUS FELCH, *Com'r.*

Filed in office June 7, 1853.

(Signed) GEO. FISHER, *Sec'y.*

13 *Dep. of Wm. Buckler.*

UNITED STATES LAND COMMISSION,
San Francisco, June 8, 1854.

On this day, before Commissioner Alpheus Felch, came William Buckler, jr., a witness in behalf of the claimant, case No. 94, who, after being duly sworn, deposed as follows:

Questions by Mr. Scott, attorney for the claimant.

1 question. Please state your name, age, and place of residence.

Answer. My name is William Buckler, jr.; my age is thirty-four years; and I reside in California, in the city of San Francisco.

2d question. Are you acquainted in the mission?

Answer. I am, and have been since March, 1849.

3d question. Are you acquainted with the piece of land in front of said mission claimed by Abel Stearns?

Answer. I am; I have known it since the spring of 1850.

14 4th question. Do you know the boundaries of that piece of land?

Answer. I did in the spring of 1850. They were surveyed for me by the county surveyor, Clement Humphreys, and a map of the same was furnished to me by him. The starting point was on the northern side of the old road leading from the mission towards San Francisco and was a stake, which was driven down quite close to the stump of an old tree. From thence the western line of the piece of land ran in a southwestwardly direction to the old tanery, and continued across the creek to a point designated by the surveyor, where a stake was driven down. This line was six hundred Spanish varas long. From thence it run eastwardly the same distance to a stake placed by the surveyor. From there the line ran northeastwardly six hundred varas to a stake placed by the surveyor, and thence westwardly six hundred varas to the place of beginning.

5th question. How is the piece of land above described situated in relation to the mission and tannery?

15 Answer. It is right in front of them, that is, east from the mission and tannery. The line first above described runs right along on the top of the wall of the tannery. I mean the eastern wall of the tannery.

6 question. State what you know about the cultivation of the land above described.

Answer. The land had evidently been cultivated before the time the above survey was made. It had not all been under cultivation; but about one fourth of the land, as near as I can estimate, had been cultivated. The remains of the furrows were to be seen. In the year 1850 it was not cultivated, except a small portion in a garden, which was cultivated by a squatter. There were some remains of cabbages. In 1849 there were no squatters on it, but the same vestiges of cultivation were to be seen. A portion had been under fence. The fence was gone, but some remains of it were there still. The portion which appeared to have been cultivated was on the western side of the premises, and near the old mission garden. I saw no house on
16 the premises.

Questions by Mr. McKune, law agent.

1 question. What were the date by which the starting point in the survey mentioned in your answer to the fourth question was fixed?

Answer. It was fixed by the surveyor in accordance with the advice of the priest of the mission and Robert Ridley, who pointed out the place. I do not know on what date it was designated.

2 question. What governed in making the remainder of the survey in giving the courses and distances?

Answer. I do not know. I know the boundaries only by their being pointed out to me by the surveyor after the survey had been made. He showed me the points.

WILLIAM BUCKLER, JR.

Subscribed and sworn to before me this eighth day of June, A. D. 1854.
ALPHEUS FELCH, *Commissioner.*

Filed in office June 8, 1854.
17 (Signed) GEO. FISHER, *Sec'y.*

Dep. of W. B. Basshan.

UNITED STATES LAND COMMISSION,
San Francisco, Oct. 26, 1854.

On this day, before Commissioner Alpheus Felch, came W. R. Basshan, a witness on behalf of the claimant, Abel Stearns, case No. 94, who, after being duly sworn, deposed as follows:

Questions by Mr. Scott, attorney for the claimant.

1st question. Please state your name, age, and place of residence.

Answer. My name is W. R. Basshan; my age is about thirty-two years, and I reside in Santa Clara County.

2 question. How long have you resided in California?

Answer. Ever since November, 1845.

3 question. Was you formerly acquainted with the Mission Dolores?

Answer. I am acquainted with it, and have known it since 1845. I was intimately acquainted with it during the years 1846 and 1847.

4 question. State what you know about any cultivation or improve-
18 ment of the lands of said mission lying east of the mission buildings?

Answer. When I was first there, there was a Spanish family living immediately in front of the mission buildings, and east of them, next, and adjoining to that occupied by that family, was a piece of land, which was enclosed and occupied by William A. Leidesdorff. He finished enclosing it in the winter of 1846–'7. I do not know the precise quantity of land included

Answer. I am acquainted with the handwritings of the several persons named in the above interrogatory. I have examined the document
12 exhibited and marked as above stated, and know their signatures to said document to be genuine. I have seen them all write on several occasions. My own handwriting also is attached to it. My signature thereto in two places is genuine. My signature and that of Pio Pico were written at the date of the instrument to which they are affixed.

Questions by Mr. Greenhow, law agent.

Do you know in whose handwriting the title on the said document is written?

Answer. I do not know in whose handwriting it is.

JOSE MATIAS MORENO.

Sworn to and subscribed before me this 7th day of June, 1853.

ALPHEUS FELCH, *Com'r.*

Filed in office June 7, 1853.

(Signed) GEO. FISHER, *Sec'y.*

13 *Dep. of Wm. Buckler.*

UNITED STATES LAND COMMISSION,
San Francisco, June 8, 1854.

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1 question. Please state your name, age, and place of residence.

Answer. My name is William Buckler, jr.; my age is thirty-four years; and I reside in California, in the city of San Francisco.

2d question. Are you acquainted in the mission?

Answer. I am, and have been since March, 1849.

3d question. Are you acquainted with the piece of land in front of said mission claimed by Abel Stearns?

Answer. I am; I have known it since the spring of 1850.

14 4th question. Do you know the boundaries of that piece of land?

Answer. I did in the spring of 1850. They were surveyed for me by the county surveyor, Clement Humphreys, and a map of the same was furnished to me by him. The starting point was on the northern side of the old road leading from the mission towards San Francisco and was a stake, which was driven down quite close to the stump of an old tree. From thence the western line of the piece of land ran in a southwestwardly direction to the old tanery, and continued across the creek to a point designated by the surveyor, where a stake was driven down. This line was six hundred Spanish varas long. From thence it run eastwardly the same distance to a stake placed by the surveyor. From there the line ran northeastwardly six hundred varas to a stake placed by the surveyor, and thence westwardly six hundred varas to the place of beginning.

5th question. How is the piece of land above described situated in relation to the mission and tannery?

15 Answer. It is right in front of them, that is, east from the mission and tannery. The line first above described runs right along on the top of the wall of the tannery. I mean the eastern wall of the tannery.

6 question. State what you know about the cultivation of the land above described.

Answer. The land had evidently been cultivated before the time the above survey was made. It had not all been under cultivation; but about one fourth of the land, as near as I can estimate, had been cultivated. The remains of the furrows were to be seen. In the year 1850 it was not cultivated, except a small portion in a garden, which was cultivated by a squatter. There were some remains of cabbages. In 1849 there were no squatters on it, but the same vestiges of cultivation were to be seen. A portion had been under fence. The fence was gone, but some remains of it were there still. The portion which appeared to have been cultivated was on the western side of the premises, and near the old mission garden. I saw no house on
16 the premises.

Questions by Mr. McKune, law agent.

1 question. What were the date by which the starting point in the survey mentioned in your answer to the fourth question was fixed?

Answer. It was fixed by the surveyor in accordance with the advice of the priest of the mission and Robert Ridley, who pointed out the place. I do not know on what date it was designated.

2 question. What governed in making the remainder of the survey in giving the courses and distances?

Answer. I do not know. I know the boundaries only by their being pointed out to me by the surveyor after the survey had been made. He showed me the points.

WILLIAM BUCKLER, JR.

Subscribed and sworn to before me this eighth day of June, A. D. 1854.

ALPHEUS FELCH, *Commissioner.*

Filed in office June 8, 1854.

17 (Signed) GEO. FISHER, *Sec'y.*

Dep. of W. B. Basshan.

UNITED STATES LAND COMMISSION,
San Francisco, Oct. 26, 1854.

On this day, before Commissioner Alpheus Felch, came W. R. Basshan, a witness on behalf of the claimant, Abel Stearns, case No. 94, who, after being duly sworn, deposed as follows:

Questions by Mr. Scott, attorney for the claimant.

1st question. Please state your name, age, and place of residence.

Answer. My name is W. R. Basshan; my age is about thirty-two years, and I reside in Santa Clara County.

2 question. How long have you resided in California?

Answer. Ever since November, 1845.

3 question. Was you formerly acquainted with the Mission Dolores?

Answer. I am acquainted with it, and have known it since 1845. I was intimately acquainted with it during the years 1846 and 1847.

4 question. State what you know about any cultivation or improve-
18 ment of the lands of said mission lying east of the mission buildings?

Answer. When I was first there, there was a Spanish family living immediately in front of the mission buildings, and east of them, next, and adjoining to that occupied by that family, was a piece of land, which was enclosed and occupied by William A. Leidesdorff. He finished enclosing it in the winter of 1846–'7. I do not know the precise quantity of land included

in the enclosure, but I think it was some four or five acres—perhaps more. The place now called the Nightingale, I think is on the land then enclosed, and that it stands near the corner of the land so enclosed. Leiderdosff built a small house on the premises. The land enclosed by him had the appearance of having been formerly cultivated as a garden. I know the old "tannery." The enclosed land above mentioned was northeast of said tannery, and it came very near to the tannery. The enclosed land lay on the front and east of said mission buildings. The tannery is in a southerly di-
19 rection from the church, and about three or four hundred yards distant from it. Leidesdorff had a greater portion of the land which he enclosed under cultivation, and had one of the best gardens near the city on it. The "Nightingale" is in a northeast direction from the tannery before mentioned, and about five hundred yards from it; it may be a little more or a little less. Nightingale is also nearly east from the church of said mission, and some three hundred and fifty or four hundred yards from it. I cannot speak with certainty of the distances.

5 question. Do you know on whose account Leidesdorff cultivated said land?

Answer I do not.

Questions by Mr. McKune, law agent.

1 question. Where, and in what employment, was you in 1846 and 1847?

Answer. The first of the year 1846, up to April, I think, I was employed by William A. Leidesdorff. I then went south to Los Angeles, where
20 I remained until September, 1846, and then returned to San Francisco, and went into the employment of Millen & Howard as a salesman. I remained in that employment until December, 1848.

2 question. Of what was said fence built? how long did it last? how much of the land was cultivated? what was the character of the cultivation? what was the time when the cultivation commenced, and how long did it continue?

Answer. The fence was built of willows and red-wood boards, and a portion of adobes. I cannot say how long it lasted, but it continued until after the death of Leidesdorff. I was there in 1848, when I left for San Jose. I cannot tell how much was cultivated, but should think about three acres; there was some more enclosed than was cultivated. It was cultivated as a garden. He commenced cultivating it as early as the winter of 1846–'7. I saw him there during that time when I was out there. I don't know
21 whether he had cultivated it previously. The cultivation was continued by him until his death. He was a merchant at that time here in the city of San Francisco, and the cultivation was done under his supervision and by his workmen. He was there frequently himself, and gave the directions to the laborers.

W. R. BASSHAM.

Subscribed and sworn to this 25th day of October, 1854.

ALPHEUS FELCH, *Commissioner.*

Filed in office Oct. 26, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Dep. of Jno. B. Sturzinigger.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Nov. 15th*, 1854.

This day came before Peter Lott, commissioner for taking testimony to be

used before the board of U. S. land commission in said State, John B. Sturzinigger, a witness on behalf of the claimant, Abel Stearns, in case No. 94 on the docket of said board, and said witness, being sworn, deposed as follows.

22 The U. S. law agent is present.

Questions by Judge Scott for claimant.

1st question. What is your name, age, and residence?

Answer. My name is John B. Sturzinigger; my age 74 years; my residence in Alameda County, California.

2d question. How long have you lived in California?

Answer. Ever since the year 1846.

3d question. Were you formerly acquainted with the Mission Dolores? If yea, state how long, and what you know of any cultivation or improvement of the lands of said mission lying east of the mission buildings.

Answer. I have known said mission since the fall of 1847, and when I first knew it Capt. Leidesdorff had a garden fenced in and cultivated in vegetables. It was perhaps 3 or 4 acres. He had a house occupied on the place by the hands he employed to work in his garden. This place was
23 some 3 or 4 hundred yards or more in an easterly course from said mission buildings.

Cross-examined by U. S. law agent.

1st question. Where did you reside in the year 1846, and how often did you see the place you have testified of during that year?

Answer. I was during the year 1846 on the American River, in a house of Capt. Sutter. I came down to San Francisco in May, 1847. I never visited said mission or said Leidesdorff place in the year 1846.

2d question. Are you acquainted with the boundaries of the Leidesdorff lot? If nay, how do you know that the house was on the lot?

Answer. I know that the lot was fenced in close to the left-hand side of the road going from here to the mission, and that there were some willow trees planted along the fence next to the road, and partly on another
24 side. The fence was the only boundary I know; this enclosed the lot, and the house stood inside of the enclosure.

3d question. How do you know it was Leidesdorff's garden, or that he had it carried on?

Answer. I was acquainted with him, and I know that he hired the hands and employed them to work the products of the garden as his own.

JOHN B. STURZINNIGGER.

Subscribed and sworn to before me on this 15th day of November, A. D. 1854.

PETER LOTT, *Commissioner, &c.*

Filed in office Nov. 17, 1854.

(Signed) GEO. FISHER, *Sec'y.*

25 *Document marked J. W. No.* 1, *annexed to dep. of Pio Pico.*

Pio Pico, gobernador constitucional de el departamento de Californias:

[SELLO.] Por cuanto D'n Jose Andrade, Mejicano, ha solicitado para su beneficio personal un terreno de seis sientas varas en cuadro situado al frente de la mision de S. Francisco de Asis que ahasa desde la Huerta hasta pasada la antuduria practicadas previamt'e las diligencias que han

sido necesarias, usando de las facultades con que me hallo autorisado por el supremo gobierno a nombre de la nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno declarandole la propiedad de el por las presentes letras con arreglo a la ley de 18 de Agosto de 1824 y reglamento de 21 de Novb're de 1828 a seserva de la aprovacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las traversias caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso y cultivo que mas le conbenga.

2a. Solicitara del juez respectivo la posesion juridica en virtud de
26 este despacho por el cual se le demarcaran los linderos con las respectivas mojoneras.

3a. El terreno de que se hace donacion es de seiscientas varas en cuadro y es el que ocupaba la mision de San Francisco con una huerta de arboles frutales y lo cartiduria. El juez que le diere la posesion lo hara medir con arreglo a ordenanza y a vista, de el diseno que presentara el interesado.

En consecuencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en el libro a que corresponde y se le entregue al interesado para su resguardo y demas fines. Dado en la ciudad de los Angeles en papel comun por no haber sellado a seis de Mayo de mil ochocientos cuarenta y seis.

PIO PICO.
JOSE MATIAS MORENO, *S'rio Ipt'o.*

Queda tomado razon de este superior despacho en el libro respectivo.
MORENO.

27 En la Ciudad de los Ang'es del departamento de California a los nueve dia del mes de Agosto de mil ochocientos cuarenta y seis ante mi el infrascrito juez primero interino comparecio Don Jose Andrade a quien doy fe conosco y digo: que por la presente otorga que vende y da en vente neal y enagenacion perpetua al Sor Don Abel Stearns y a los suyos el sitio que consta en el antecedente titulo situado al frente de la mision de San Francisco de Asis y consta de seiscientas varas cuadradas cuya venta tiene recibidos a su satisfaccion declarando que el repetido sitio esta libre de todo gravamen y que sera cierto y seguro al comprador de lo cual sale responsable y a la firmeza de lo referido obliga su persona y bienes presentes y futuros y con ellos se somete al fuero de los senores jueces q'l en este negocio devan conocer para q'e lo apremica a su cumplimiento como por sentencia definitiva de juez competente pasada en autoridad decora jusgada consentida y sin mas recursos en cuyo testimonio asi lo
28 otorgo y firmo conmigo y dos de asistencia segun derecho no hay papel sellado.

JOSE ANDRADA.

Ass'a: LEONARDO COTA.
Ass'a: MANUEL ENRIQUEZ.

Filed in office Sept'r 27th, 1852.

GEO. FISHER, *Sec'y.*

Document J. W. No. 1, *annexed to dep. of Pio Pico.*

[Translation.]

Pio Pico, constitutional governor of the department of California:

[SEAL.] Whereas Don Jose Andrade, a Mexican, has petitioned, for his personal benefit, a tract of land six hundred varas square, in front of the mission of San Francisco de Asis, which embraces from the Huertas to

beyond the Curtiduria. The necessary proceeding having been had in the exercise of the powers with which I am invested by the supreme government in the name of the Mexican nation, I have concluded by a decree of this day to grant him the aforesaid tract of land hereby declaring unto him the ownership thereof in conformity with the law of the 18th of Aug't, 1824,
29 and the regulation of November 21st, 1828, subject to the approval of the most excellent departmental assembly and under the following conditions:

1st. He may enclose it without prejudice to the crossings, roads, and servitudes; he shall enjoy it freely and exclusively, appropriating it to the use and cultivation he may deem proper.

2d. He shall solicit of the respective judge the juridical possession in virtue of this title, by which the boundaries shall be marked out with the proper landmarks.

3d. The land hereby granted is six hundred varas square, and is that which the mission of San Francisco occupied with an orchard and tannery. The juez who shall give him the possession thereof shall cause it to be measured according to ordinance and with reference to the diseno which the grantee shall furnish.

Therefore the present title being held as firm and valid, I order it to be entered in the proper book, and that this be delivered to the grantee for his security and other purposes.

Given in the city of Los Angeles, on common paper for the want
30 of stamped, on the sixth day of May, one thousand eight hundred and forty-six.

Signed) PIO PICO.
(Signed) JOSE MATIAS MORENO, *Secretary.*

Entry is made of this superior despacho in the proper book.

MORENO.

In the city of Los Angeles, department of Californias, on the ninth day of the month of August, one thousand eight hundred and forty-six, before me, the undersigned, first juez ad interim, came Don Jose Andrade, to me known, and declared that by these presents he sells and gives in real sale and perpetual alienation to Don Abel Stearns, his heirs and assigns, the place described in the foregoing title situated in front of the mission of San Francisco de Asis, and is six hundred varas square, for and in consideration of the sum of one hundred dollars, the receipt whereof, to his satisfaction, he hereby acknowledges, declaring the said place to be free from
31 every incumbrance and that it shall be certain and secure to the vendee, whereof he constitutes himself responsible. And for the fulfilment of the foregoing he binds his person, his present and future property, and therewith submits himself to the authority of the juez, who in this cause should take cognizance, that they compel him to the fulfilment of, as by a definitive sentence of a competent juez given in res judicata, consented to and without appeal.

In testimony whereof, he thus executed and signed it with me and two assisting witnesses according to law.

(Signed) LEONARDO COTA.
" JOSE ANDRADE.

Assisting witnesses:
(Signed) Y'GO CORONEL.
" MANUEL EURIQUEZ.

I hereby certify the foregoing to be a true and correct translation of a document in case No. 94, marked J. W. No. 1, annexed to the deposition of Pio Pico, &c.

Witness my official signature this 27th day of September, 1852.

GEO. FISHER, *Sec'y.*

32 Filed in office Sept. 27, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 17, p. 258.

GEO. FISHER, *Sec'y.*

Affidavit of J. R. Scott.

Before the U. S. land commission, case 94, claim of Abel Stearns for part of the Mission Dolores.

STATE OF CALIFORNIA, *San Francisco County, ss:*

J. R. Scott, being duly sworn, says: Stetzenniger is a material witness on the part of the claimant, and without whose testimony he cannot safely proceed to trial; that affiant has the entire management of this cause, and that he was never able to ascertain the whereabouts of the witness until about three weeks past; that immediately upon ascertaining where he resided affiant proceeded to his residence in Oakland and found the witness too sick to attend, nor has affiant since been able to procure his
33 attendance; that important legal business will compel affiant to return to Los Angeles on Saturday next, and affiant does not believe he will be able to procure the attendance of the said witness before leaving and that affiant considers it necessary to attend in person at the submission of said cause, and will not be able to return to San Francisco before the middle of Dec.

J. R. SCOTT.

Sworn to and subscribed before me this 14th day of Nov., 1854.

S. B. FARWELL, *Com.*

Filed in office Nov. 14, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Opinion by Com'r Felch.

ABEL STEARNS
vs.
THE UNITED STATES.

For a lot 600 varas square at the Mission Dolores, in San Francisco County.

A grant is given in evidence made by Governor Pio Pico to Jose
34 Andrade on the sixth day of May, 1846, to which is attached an instrument purporting to convey all the interest of the grantee to Abel Stearns, the present claimant, executed on the ninth day of August, 1846.

No approval by the departmental assembly is proved, and the grantee never did anything, so far as appears by the proof under his grant, excepting to sell his interest in it.

Neither he nor the claimant before the commission appears to have occupied in any way or to have cultivated any portion of the premises, and the equities, if any exist, are of the slightest character.

There is, however, a fatal objection to a confirmation of this claim in the want of defined boundaries of the premises.

Judicial measurement was required by the grant, but never obtained. The description given in the grant is too indefinite and uncertain to enable

a surveyor to locate the lines by the terms of it, and the map which the party was required by the grant to furnish not being presented, and
35 no evidence being given which obviates the difficulty, the claim cannot be confirmed.

Rejected.

Filed in office Jan. 23, 1855.
(Signed) GEO. FISHER, *Sec'y.*

Decree.

ABEL STEARNS
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is not valid, and it is therefore decreed that the application for a confirmation thereof be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL, *Commissioners.*

Filed in office Jan. 23, 1855.
(Signed) GEO. FISHER, *Sec'y.*

36 And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the U. S. district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's certificate.

OFFICE OF THE BOARD OF LAND COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-nine pages, numbered from one to twenty-nine, both
37 inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 94 on the docket of the said board, wherein Abel Stearns is claimant against the United States for the place known by the name of "Land at the Mission Dolores."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-first day of July, A. D. 1855, and of the independence of the United States of America the eightieth.

[SEAL] GEO. FISHER, *Sec'y.*

Endorsed: Filed July 21st, 1855.

J. A. MONROE, *Clerk.*

38 *Notice of appeal.*

In the district court of the United States in and for the northern district of California.

ABEL STEARNS, appellant,
vs.
THE UNITED STATES, appellees. } Case No. 262; transcript No. 94.

Appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, taken on the 1st day of July, A. D. 1855, by the said board having filed with the clerk of said court a certified transcript of their proceedings and decision, and of the papers and evidence upon which the same are founded in the said cause, being No. 94 on the docket of said board. Notice is hereby given that Abel Stearns, appellant in the above-entitled cause and claimant before the said board, in a claim for a tract of land lying in front of the mission of San Francisco de Asis or Dolores, situate in said northern district of California, filed before said board on the 9th day of March, A. D. 1852, and being on its docket No. 94, will prosecute the appeal herein from the final decision
39 of said board, entered on the 23d day of January, A. D. 1855, against said claimant and appellant.

J. R. SCOTT, *Att'y for Appellant.*

Endorsed: Filed October 26, 1855.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Petition.

ABEL STEARNS, appellant,
vs.
THE UNITED STATES, appellee. }

To the honorable district judge, United States district court for the northern district of California:

Abel Stearns, the above appellant, by J. R. Scott, his attorney, would respectfully state to the court that on the sixth day of May, 1846, Pio Pico, then constitutional governor of California, granted to Jose Andrade a
40 tract of land containing six hundred varas square, situate in the northern district of California, county of San Francisco, and is situate in front of the mission buildings of the mission of San Francisco de Asis or Dolores, including the huertas or garden of said mission, to beyond the tanyard of the same, or till the quantity of six hundred varas square be completed, and that on the ninth day of August, 1846, the said grantee, Jose Andrado, sold and conveyed by deed of grant of that date the above-described lands to this appellant.

And your petitioner further states that on the 9th day of March, 1852, be filed before the board of land commissioners to ascertain and settle private land claims in the State of California, his petition, praying that his claim to said land might be confirmed by said board, but that on the 23d day of January, 1855, the said board of commissioners entered a decree rejecting said claim.

Your petitioner further states that he filed before said board of land commissioners, in support of his claim, the original title of the said Pio Pico to the said Jose Andrade and the deed of the said Jose Andrade to your
41 petitioner, together with the depositions of witnesses taken in the case. All of which are fully set forth in the transcript of the proceedings had in this cause before said board, filed in the office of the clerk of this court on the 21st day of July, 1855.

And your petitioner states that on the 26th day of October, 1855, he filed with the clerk of this court a notice of intention to prosecute an appeal in this case. Therefore, petitioner would pray that the decision of the commissioners in this case may be reviewed and reversed by this court, and that his claim to the lands aforesaid may be declared valid, and be confirmed by this honorable court.

J. R. SCOTT, *Att'y for Petitioner.*

Endorsed: Filed Jan., 19, 1856.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

42 *Dep. of H. F. Teschemacher.*

United States district court, northern district of California.

ABEL STEARNS
vs.
THE UNITED STATES.

SAN FRANCISCO, *January* 26, 1856.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came H. F. Teschemacher, a witness produced on behalf of the claimant in case No. 262, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 94 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: J. R. Scott, counsel for claimant, and the U. S. district attorney by A. Glassell, esq.

Questions by claimant's counsel.

What is your name, age, and place of residence?

Answer. H. F. Teschemacher; 33 years of age, and reside in San Francisco, Cal.

43 2nd. How long have you resided in California?

Answer. Since the commencement of the year 1842.

3rd. Are you acquainted with the mission of San Francisco de Asis or Dolores? If yea, how long have you known it?

Answer. I am. I have known it ever since the year 1842.

4th. Do you know where the garden and tannery of said mission were in the year 1846? If yea, state how far they were from the mission buildings, and describe the position of each.

Answer. I do. The tannery was between 200 and 300 varas, as near as I can recollect, in an E.SE direction from the church. The garden was nearly in front, but a title to the south of the mission buildings, perhaps 40 or 50 varas distant therefrom.

44 5th. How do the mission buildings face?

Answer. As nearly as possible to the north of east.

6th. Was there a space of ground in front of the mission buildings between them and the garden? and if yea, what was its width, and for what purpose was it used in 1846?

Answer. There was a space, as near as I can recollect, about 50 varas in width. It was used as a road or street to come up to the mission.

7th. How large and in what form was the mission garden, and how was it situated as regards the points of the compass?

Answer. I should think it was about 150 varas in length from about NW. to SE., and about 100 varas in width. It was an oblong piece of land.

8th. Taking the line of the garden nearest the mission from NW. to SE., how near would that line come to the tannery, and on which side of it would the line pass?

45 Answer. It would pass within 30 or 50 varas of the west side of it.

9th. State anything you may know about any lands being occupied by parties south or east of the garden, counting 600 varas each way from its NW. corner, at any time during the year 1846.

Answer. To the best of my recollection there were no occupants of said land.

10th. State whether or not any lands were occupied to the north of the garden in the same year. If yea, by whom?

Answer. There were to the NW. There was one house which joined on to the garden, perhaps two. A family named Valencia occupied the one that joined on to the garden.

11th. How near is the church to the mission buildings, and in what direction from them?

Answer. It joins on to the southerly or SE. end of said buildings and forms the wing.

12th. Which extends farthest in a northerly direction, the NW.

46 corner of the garden or the NE. corner of the mission buildings?

Answer. If there is any difference I should think the corner of the buildings was a little farther north. There was a very little difference. They were very nearly alike.

13th. How far did the street or road which runs between the buildings and the garden extend southerly, where did it lead to, and on which side of the tannery, and how far distant from did it pass?

Answer. This open space ran in a SE. direction till it struck the San Jose road. It passed on the west side of the tannery, and about 30 to 50 varas distant therefrom.

14th. When did the Americans take possession of San Francisco?

Answer. In the month of July, A. D. 1846.

15th. How far was said mission in that year from the city of San Francisco as it now stands?

Answer. Between 2 and 3 miles by the road from the plaza.

47 *Cross-examined by U. S. dist. att'y.*

Have you any interest, direct or indirect, in the event of this suit?

Answer. None whatever.

H. F. TESCHEMACHER.

Endorsed: Filed March 28, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

Answer.

In the district court of the U. States for the northern dis't of Cal'a.

THE UNITED STATES *ads.* ABEL STEARNS. } D. C. 262; L. C. 94.

The United States, by their attorney, deny the validity of the title set out in the petition of the appellant, and pray that the decision of the U

48 S. land commission be affirmed, and that the said title be decreed invalid.

San Francisco, Feb'y 12, 1857.

WM. BLANDING, *U. S. Atty.*

Endorsed: Filed February 12, 1857.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Dep. of Henry Mellus.

United States district court, northern district of California.

THE UNITED STATES
ads.
ABEL STEARNS.

SAN FRANCISCO, *April* 16, 1857.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Henry Mellus, a witness produced on behalf of the claimant in case No. 262, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 94 on the docket of the said board of commissioners, and was duly

49 sworn, and testified as follows.

Present: J. R. Scott, esq., att'y for cl't, and the U. S. dis't att'y.

Questions by att'y for claimant.

Question. What is your name, age, and residence?

Ans. My name is Henry Mellus; 40 years; and I reside in Salem, Massachusetts.

Question. Did you ever reside in California? If yea, when, and how long?

Ans. I did reside in California from January, 1839, to October, 1848.

Ques. Did you know Abel Stearns during those years?

Ans. I did.

Ques. Where did he reside?

Ans. At Los Angeles.

Ques. Did you know Wm. A. Leidesdorff?

Ans. I did.

Ques. How long did you know him?

50 Ans. During the years 1845, 1846, 1847, and 1848.

Ques. Where did Leidesdorff reside?

Ans. At this city, then called Yerba Buena.

Ques. Do you know the Mission Dolores? And if so, how long have you known the same?

Ans. I do know the Mission Dolores, and have known it since April, 1835. I was here on the coast from 1835 to 1839, and then I resided here.

Ques. State any knowledge you have of Wm. Leidesdorff occupying or cultivating any lands at the Mission Dolores, and what time.

Ans. At the latter part of May, 1847, I was here with my family from Los Angeles; saw said Leidesdorff frequently, and he told me of a garden that he had under cultivation, and getting vegetables at the mission.

(Objected to by U. S. dis't att'y as hearsay evidence.)

51 Ques. Do you know under whom Leidesdorff held the garden? If so, tell all what you know about it.

Ans. Mr. Leidesdorff told me that the garden was the property of Abel Stearns; that he wished to buy it from Mr. Stearns, and requested me to talk with Mr. Stearns about selling it; to which propositions Mr. Stearns objected, after hearing them from me. Said conversation with Leidesdorff and Stearns took place during the year 1847.

(Objected to by U. S. dis't att'y as hearsay evidence.)

Cross-examination.

Ques. Do you know where the land of said garden was situated?

Ans. I do not, except by hearsay.

Ques. Do you know whether Stearns or Leidesdorff ever occupied or cultivated it?

Ans. I know nothing except what Leidesdorff told me.

HENRY MELLUS.

52 Sworn to and subscribed before me, this 16th day of April, A. D. 1857.

JOHN A. MONROE, *U. S. Commissioner.*

Endorsed: Filed April 16, 1857.

JOHN A MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Dep's of Benito Diaz and V. P. Gomez.

United States district court, northern district of California.

THE UNITED STATES
vs.
ABLE STEARNS.

SAN FRANCISCO, *October* 15, 1857.

On this day, before J. Edgar Grymes, a special commissioner and referee appointed by the dis't court of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Benito Diaz and Vicente P. Gomez, witnesses produced on behalf of the United States in case No. 262, being an appeal from the board of commissioners to
53 ascertain and settle the private land claims in the State of California, in case No. 94 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by the commissioner, consent of both parties.

Present: U. S. dis't att'y by A. Packard, esq'r, and J. R. Scott for claimant.

Questions by U. S. dis't att'y.

1st ques. What is your name, age, and place of residence?

1st ans. My name is Benito Diaz; 43 years old; and I reside in Monterey County.

2 ques. What was your occupation during the months of May, June, and July, 1846, and where were you during those months?

2nd ans. I was in different places. In May, 1846, I was employed in the custom-house. I was in Monterey and in San Francisco and Los Angeles.

3rd. Which of the said months were you in Los Angeles?

54 3rd ans. After the country was taken by the Americans, either the latter part of July or the early part of August.

4th ques. What time did you leave San Francisco?
4th ans. I believe it was in last days of June.
5th ques. What was your occupation during that period?
5th ans. I came here to receive an English ship.
6th ques. In what manner and in whose company did you arrive at Los Angeles?
6th ans. With the forces of Gen. Castro.
7th ques. Were you there during the aforementioned months previous to the 10th of July?
(Question objected to as leading.)
7th ans. No.
8th ques. Look at document now placed in your hands by T. Suell, and marked J. W. No. 1, annexed to the deposition of Pio Pico, taken before Com'r James Wilson and further marked No. 94, Abel Stearns, San
55 Francisco de Asis or Dolores, and see if you recognize the handwriting of the 1st and 2nd pages of said document.
(Question objected to.)
8th ans. Yes, I know it.
9th ques. State in whose handwriting it is?
(Objected to.)
9th ans. It is in my handwriting.
10th ques. State when, where, and under what circumstances you wrote that.
(Objected to)
10th ans. I recollect that I wrote it in Los Angeles; I do not remember exactly the circumstances, but I believe I was asked to write it because the secretary was not there. I cannot say exactly the time, but it was in Los Angeles.
11th ques. Was it before or after you went to Los Angeles with Gen'l Castro, as stated in answer to the 6th question.
11th ans. When I went there with Gen'l Castro.
56 12th ques. Look at the date of said document, on the second page, and state if it was written at that date therein stated.
12th ans. It was not written when it was dated.
13th ques. Do you remember the date as near the date of your writing this document?
13th ans. The date I cannot recollect.
14th ques. Do you remember the month?
(Question objected to.)
14th ans. It must have been in July or August.

Cross-examination.

15th ques. When did you last see the document referred to before to-day?
15th ans. The last time I was here, 15 or 20 days ago.
16th ques. When did you see it last previous to that time?
16th ans. Three or four months ago, in the archives.
57 17th ques. When did you see it last previous to that time.
17th ans. I do not remember of ever having seen it before, or that I had written it.
18th ques. Who employed you to come here to testify?
18th ans. The first time it was Mr. A. Packard, and yesterday I was subpœnaed.
19th ques. Did Mr. Packard promise to give you any reward to come here and testify?

19th ans. The last time he promised to pay my expenses, but this time nothing.

20th ques. How much did he agree to give you for your expenses?

20th ans. For nine days that I was here he gave me thirty dollars.

21st ques. Has he or any other person agreed to give you any more than that sum to come here to testify?

21st ans. No, sir.

58 22nd ques. Who was secretary at the time the document referred to was drawn?

(Question objected to as irrelevant.)

22nd ans. Jose Matias Moreno.

23rd ques. Who was present at the time you drew up this document?

23rd ans. I remember that Jose Andrade was present; I cannot recollect of any other person.

24th ques. In what house was it drawn?

24th ans. It was in a room before entering in the secretary's room in the governor's house.

25th ques. What was you doing in Los Angeles at the time you was there?

25th ans. I was as a military man belonging to the forces.

26th ques. Who employed you to write it?

26th ans. I do not remember whether it was Andrade or the secretary. It was one of the two.

59 To the fifth question the witness amended the answer. He says that he came here with a commission from the custom-house to receive an English ship. In answer to the 10th question in place of the word "there" it should be "occupied."

BENITO DIAZ.

Sworn to and subscribed before me this 15th day of October, A. D. 1857.

J. EDGAR GRYMES, *Special Com'r.*

Vicente P. Gomez, being duly sworn, deposes and says, in answer to the following questions, as follows:

1st ques. What is your name, age, and place of residence?

1st ans. My name is Vicente P. Gomez; 34 years old; and I reside in Monterey.

2nd ques. Where were you and what was your occupation during the months of May, June, and July, 1846?

60 2nd ans. I was a soldier under Gen'l Castro. In July I was in Los Angeles; I do not recollect where I was in May; I was with Gen'l Castro.

3rd ques. Do you remember what month you arrived at Los Angeles?

3rd ans. I arrived there the same month that Gen'l Castro did; I was in his company.

4th ques. Was it before or after the Americans took possession of the upper part of this country?

(Objected to.)

4th ans. Afterwards.

5th ques. Please examine the document now placed in your hands by J. Snell, marked on the envelope "1846, 600 v. en cuadro en la mision de San Francisco concedido a Jose Andrade," (No. 532,) and state if you recognize the handwriting on the 1st page of said document and a portion of the 2nd page, concluding with the signature "Jose Andrade."

(Question objected to.)

5th ans. It is in my handwriting.

61 **5th ques. When, where,** and under what circumstances did you write that?

6th ans. I entirely disremember this act.

6½ ques. Look at the date of said document, and see if you wrote it at or about that date.

(Question objected. Question withdrawn.)

7th ques. State the nature of that portion that you recognize as your handwriting.

(Question objected to.)

7th ans. It is a petition for 600 varas of land at the mission. (Witness pointing towards the Mission Dolores.)

8th ques. What is the purporting date of the same?

(Question objected to.)

8th ans. The 4th of May, 1846.

9th ques. Did you write that at that date?

(Objected to as being irrelevant and leading.)

9th ans. Surely I did.

62 10th ques. Were you at Los Angeles at that date?

(Objected to.)

10th ans. Without doubt I was there.

11th ques. How did you get there at that date?

(Objected.)

11th ans. Because I went there as a soldier with Gen'l Castro.

12th ques. Did you go there in Castro's company at this date—the 4th of May, 1846?

(Objected to.)

12th ans. Yes, sir.

13th ques. Who else was in company with you at this date?

(Question objected to.)

13th ans. 500 men.

14th ques. Did Gen'l Castro return from there during the year 1846?

14th ans. Gen'l Castro went to Sonora.

15th ques. Did you write this document in Los Angeles pending

63 the time Gen'l Castro was there and previous to his going to Sonora?

(Question objected to as leading and irrelevant.)

15th ans. I do not remember when I wrote it; it must have been before Castro went to Sonora, for the night he left for Sonora I left there also.

16th ques. Did you or did you not write this document after the Americans took Monterey, in the year 1846?

(Objected to.)

16th ans. If I wrote it in Los Angeles, Monterey was already taken.

17th ques. Did you or did you not write it in Los Angeles?

17th ans. I do not remember of this act.

18th ques. Please examine this document again, and see whether it does not purport to have been written in Los Angeles.

(Question objected to.)

18th ans. Surely it must have been, since it is dated from Los Angeles. It was written in Los Angeles.

64 19th ques. Were you in Los Angeles at any other time in the year 1846 than the time you have stated, when you accompanied Gen'l Castro?

(Objected to.)

19th ans. No, sir.

20th ques. Where were you prior of going to Los Angeles?

20th ans. I was in the campaign at Santa Clara and other places.

21st ques. In what part of the country were you when the Americans took Monterey?

(Question objected to.)

21st ans. I do not remember.

22nd ques. Were you in or near Monterey at that time?

(Objected to.)

22nd ans. I do not remember exactly.

23rd ques. Were you in or near the Mission San Luis Obispo?

(Objected to.)

23rd ans. It may have been that I was there, but I do not recollect.

65 24th ques. Did you pass through Santa Barbara with Gen'l Castro on your march to Los Angeles?

(Objected to.)

24th ans. Yes, sir; we passed thro' Santa Barbara.

25th ques. Did you see Gov. Pio Pico in Santa Barbara at that time?

(Objected to.)

25th ans. Yes, sir; I saw him at the mission.

26th ques. Was he alone, or had he forces with him?

(Objected to.)

26th ans. He had forces with him.

27th ques. Had you then heard that Monterey had been taken?

(Objected to.)

27th ans. It was reported that it was taken.

28th ques. How long were you going to Los Angeles at that time?

28th ans. I do not remember the number of days it took.

66 29th ques. Were you a week or one month?

(Objected to.)

29th ans. It is more likely that we took 2 or 3 days than a month.

30th ques. Did you or did you not write that document after your arrival in Los Angelos with Gen'l Castro?

(Objected to.)

30th ans. I do not remember exactly this act.

31st ques. Could you have written this document in any other place than Los Angeles?

(Objected to.)

31st ans. I do not recollect of this act.

32nd ques. Do you remember of doing any writing during the period you was there with Gen'l Castro?

(Objected to.)

32nd ans. I remember that I wrote something.

33rd ques. State what you remember you wrote.

(Objected.)

67 33rd ans. I wrote official papers, letters, I cannot remember all I wrote.

34th ques. Do you know Jose Andrade?

(Objected to.)

34th ans. Yes, sir.

34½ ques. Did you know him at Los Angeles at the time he was there with Gen'l Castro?

(Objected to.)

34½ ans. Yes, sir, and before that time.

35th ques. What was his business in Los Angeles at that time?

(Objected to.)

35th ans. A soldier.

36th ques. Did you or did you not write this document at the request of Jose Andrade?

(Objected to.)

36th ans. Yes, sir; at the solicitation of Andrade.
37th ques. Did he or did not request you to write this at Los Angeles?
(Objected to.)
37th ans. Surely it was in Los Angeles.
68 38th ques. Was it at the time that you and him were there with Gen'l Castro?
(Objected to.)
38th ans. Yes, sir.

Cross-examination.

39th ques. Who employed you to come here to give testimony?
39th ans. Mr. Packard.
40th ques. What did he agree to give you to come?
40th ans. I did not know that I was to come here before I received a subpœna.
41st ques. Did you not come here from Monterey at the solicitation of Mr. Packard?
41st ans. No, sir; I came here to sell a ranch.
42nd ques. Are you positive that you wrote that document at the time it bears date?
42nd ans. Yes, sir.

Direct resumed.

69 43rd ques. Why are you positive that you wrote that document at the time it bears date?
(Objected to.)
43rd ans. Only because I see the date there.
44th ques. Have you no other means of being positive?
(Objected to.)
44th ans. No, sir.
45th ques. Can you not call to mind any other attendant circumstance in connection of writing this document than those you have already given?
(Objected to.)
45th ans. No, sir; I do not remember entirely this act.
46th ques. Do you remember what date you arrived in Los Angeles in the year 1846?
(Objected to.)
46th ans. No, sir.
47th ques. Is your memory good as to dates?
70 (Objected to.)
47th ans. No, sir; I have not a good memory as to dates.

VICENTE PERF'TO GOMEZ.

Sworn to and subscribed before me this 15th of October, A. D. 1857.

J. EDGAR GRYMES, *Special Com'r.*

Endorsed: Filed October 15th, 1857.

JOHN A. MONROE, *Clerk*,
By J. EDGAR GRYMES, *Deputy.*

Stipulation of counsel that archive evidence may be introduced, &c.

U. S. district court, northern district of California.

THE UNITED STATES
vs.
ABEL STEARNS. } No. 262.

It is stipulated between the respective counsel that traced copies of orig-

inal papers used in taking the deposition of Ambrosio Gomez, Manuel Castro, and R. C. Hopkins, may be hereafter filed by either counsel with
71 the same effect as if the same had been filed at the time of taking such depositions and marked as exhibits.

EUGENE LIES,
Associate Counsel for the U. S.
SIDNEY L. JOHNSON, *for Claimant.*

Endorsed: Filed Feb'y 11, 1861.

W. H. CHEVERS, *Clerk.*

Stipulation to take testimony, &c.

U. S. district court, nr. dist. of Cal.

THE UNITED STATES
vs.
ABEL STEARNS. } No. 262.

Consented on the part of the United States that testimony taken in the above-entitled cause, and hereafter to be taken, be read in evidence on the hearing of the same.

CALHOUN BENHAM, *U. S. Att'y.*
SIDNEY L. JOHNSON, *for Claimant.*

72 Endorsed: Filed March 4, 1861.

W. H. CHEVERS, *Clerk.*

73 *Deposition of R. C. Hopkins on part of the U. S.*

In the district court of the United States for the northern district of California, in land cases.

UNITED STATES
vs.
ABEL STEARNS. } Dist. court No. 262; land com. No. 94.

Be it remembered, that on this eleventh day of February, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: Eugene Lies for the United States; U. S. att'y for U. S.; Sidney L. Johnson, esq., for claimants.

74 *Questions in behalf of the United States.*

Question 1st. What is your name, age, residence, and occupation?

Ans. Rufus C. Hopkins; lawful age; keeper of the Spanish archives in the office of surveyor general of United States for California; residence, San Francisco.

Ques. 2d. Look at pages 263, 264, 265, and 266 of vol. 2 of Departmental State papers, called "payments," and state whence you produce this book, and the character of the said paper.

Ans. It is from the Spanish archives of the office of surveyor general of the United States for California. The paper referred to is a monthly balance sheet made out in the office of the treasury on the 1st of May, 1846, signed by Jose Abrejo, then measurer, and approved by Manuel Castro.

Ques. 3d. In whose handwriting is said paper?

(Objected to by counsel for claimants, on the ground that there is no foundation laid for the question, by showing that witness is acquainted
75 with the handwriting and how he became acquainted with the handwriting.)

Ans. I think said handwriting is in the handwriting of Vicente Gomez.

Ques. 4th. What means have you of knowing his handwriting?

Ans. I have seen Mr. Gomez write, and have examined a great deal of his writing in the archives.

Ques. 5th. Have you searched the Mexican archives for expedientes and other records connected with this claim of Able Stearns *vs.* United States? If so, produce, what you have found, if anything.

Ans. I have searched the Mexican archives for the purpose mentioned in question, and find a document endorsed "1846, 606 varas square in the mission of San Francisco, conceded to Jose Andrade, No. 552," and grant for the same, dated Los Angeles, May 5th, 1846, signed by Governor Rio Pico, and countersigned by Jose Marteas Moreno, secretary ad interim; and conveyance from Andrade to Abel Stearns, the claimant. These two last-mentioned
76 documents are from the files of the late board of land commissioners, and not from the archives of the secretaria of the former government.

Ques. 6th. Are you acquainted with the several handwritings in said papers?

Ans. I am familiar with the handwritings in the expediente and grant.

Ques. 7th. In whose handwriting are they?

Ans. The endorsement upon the expediente is in the handwriting of Wm. E. Hartnell, who, in connection with Capt. Halleck, had charge of the archives in 1847 and 1848. Petition, dated Angeles, May 4, 1846, and signed Jose Andrade, is, I think, in the handwriting of Vicente Gomez. The marginal order, dated Angeles, May 5, 1846, signed Pico, is, I think, in the handwriting of Pio Pico, signature and all. The decree of concession, dated Angeles May 6, 1846, signed Pio Pico and Jose Marteas Moreno, secretary ad interim, is, I think in the handwriting of Jose Martias Moreno. The
77 signatures to this document are, I think, genuine. The borrador of the grant, the last document in the expediente, is also in the handwriting of Jose Matias Moreno, with the exception of the following interlined words: "de 600 varas en cuadro situado al frente de la mision de S. Franc'o de Assis, que abrasadesde la huerta hasta pasada la curtiduria," which words, I think, are not in the handwriting of Jose Martin Moreno. The grant I think, is in the handwriting of Benito Diaz. The signatures to the grant are genuine. The signature of Moreno to the note of registry of the grant. is, I think, genuine. The body of the note of registry is, I think, in the handwriting of Moreno.

Examination of witness suspended for the present, by consent. Claimant reserving the right of cross-examining when the examination in chief is completed.

FEB'Y 22, 1861.

78 Examination of R. C. Hopkins, resumed.

Present: U. S. att'y for U. S.; S. Johnson for claimants.

Ques. 8th. Look at paper marked Exhibit A, and state what it is.

Ans. The first two pages a comprise a certified copy of the monthly balance sheet mentioned in my answer to question 2. The last page of said paper contains certified copies of the order from Jose Castro to the treasurer, and the receipt of Benito Diaz for $1,914 50 to the treasurer, referred to by Ambrosio Gomez in his deposition in this case, in his answer to question 51.

Ques. 9th. Look at paper marked B, and state what it is.

Ans. It is a traced copy, certified by the surveyor general, of the grant to Andrade and conveyance by Andrade to Abel Stearns, referred to before in this deposition.

Ques. 10th. Look at paper marked C, and state what it is.

79 Ans. It is an extract from the judicial possession on file in the papers of the late land commission of the Rancho Corralitos.

Ques. 11th. Look at paper marked D, and state what it is.

Ans. It is a certified copy of the Montesdioca document.

Ques. 12th. Look at paper marked E, and state what it is.

Ans. It is a paper containing certified copies of the proceedings of the departmental assembly, of 13th May, 1846, and 15th April, 1846.

Ques. 13th. Look at paper marked F, and state what it is.

Ans. It is a traced copy of the expediente in No. 552, heretofore mentioned by me in this deposition.

Ques. 14th. Have you heretofore made it a special study to compare handwritings? If so, state under what circumstances, and whether you have obtained peculiar knowledge and experience in this branch.

80 Ans. For the last six years, or very nearly, I have had charge of the Spanish archives in the office of the U. S. surveyor general. During all this time I have been constantly in the habit of examining and comparing the different handwritings therein found. In this way I have become familiar with the handwritings of most of the officials of the former government of California, and of many other persons, and I think I have acquired very considerable expertness in detecting similarities or discrepancies between handwritings.

Ques. 15th. Were Benito Diaz and Vicente P. Gomez officials of such former government?

Ans. Benito Diaz was receptor in San Francisco from 1844 till some time 1845. Vicente P. Gomez was for some years a clerk in the treasurer's office.

Ques. 16th. Have you enjoyed opportunities to study and compare the handwritings of the two last-named officials? If so, state them.

Ans. I have, and have had frequent occasion to make a critical
81 examination of the handwriting of Vicente P. Gomez.

Ques. 17th. Have you carefully examined the original expediente No. 552, (a copy of which, marked F, is attached to this deposition,) and the original of Exhibit A, a copy of which original is attached to this deposition, with a view to ascertain critically in whose handwriting they were? If so, state the result.

Ans. I have; and have no doubt but that the originals in question are in the handwritings of those persons, as stated heretofore by me in this deposition.

Deposition closed.

R. C. HOPKINS.

Subscribed and sworn to before me this 4th day of March, 1861.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed March 4th, 1861.

W. H. CHEVERS, *Clerk.*

82 "*A*," *attached to deposition of R. C. Hopkins.*

Tesoreria departamental de la Alta California, Corte de Caja practicada en dicha oficina con distencion de los ramos y pertenencias que forman el total cargo y la data habidos en el mes de Abril p'o p'do.

Cargo :

Enteros por el descuento de un centavo de peso	45	7	9
Prestamo en calidad de pronto reintegro cuyo prestamo ha sido por varias ordenes pa pagos los que no se pudieron hacer en su totalidad y para datarlos fue necesario hacer el presente prestamos	3,656	3	0
Ecsistencias	12,873	2	0
Enteros por la aduana de este puerto	26,825	6	9
Suma el cargo	$43,401	3	6

Data :

Gastos estraordinarios	11,552	0	0
Reintregos	450	0	0
Gastos de guerra	521	0	0
Yd. de recomposicion de fincas nacionales	15	0	0
Exmo. sor. gobernador	269	4	0
Comandante general	188	3	0
Proceptor de prim's letras D. Henrique Cambuston	149	2	0
Yd. de id., D. Florenci Serrano	201	6	0
Yd. de pueblo de S. Jose D. Agustin Gutierre	160	0	0
Preceptora de ninas Da. Francisca Gomez	30	0	0
Prefecto del 2o distrito D'n Manuel Castro	457	0	0
Cirajans mititor D. Juan Torvonsend	25	0	0
Sub. ten'te de trft'a ausiliar D'n Fran'co Arce	159	7	0
Yd. de id., D'n Pedro Estrada	267	0	0
83 Yd. de id., D'n Juan Soberanes	248	2	0
Yd. p'te D'n Manuel Garfias	33	2	9
Yd. p'tt D'n Rafael Sanchez	130	6	10
Ten'te de inf'ta p'tt. D'n Mariano Villa	8	3	8
Ten'te de inf'ta p'tt. D'n Fran'co Eguren	33	2	9
Yd. de id., D'n Macedonio Padilla	54	1	5
1er ten'te de marina D'n Pedro Narvaez	252	4	3
Cap'n de infl'a p'tt D'n Victor Prudon	85	6	9
Compania de Monterey	1,534	2	6
Cap'n presidial D'n Juan Castaneda	199	3	10
Diputado de ca asamblea dep'tl D'n Carlos Carrillo	650	0	0
Cabo invalido Manuel Rodriguez	10	0	0
Sub. ten'te D'n Ygnacio Servin	36	3	0
Alferes de cab'a p'tt D'n Fran'co Vargas	80	0	0
Cap'n ausiliar D'n Eugenio Montenegro	300	0	0
Alferez ausiliar D'n Miguel Castro	158	0	0
Yd. id., D'n Guadalupe Soberanes	172	0	0
Yd. id., D'n Jose Ma. Soberanes	189	4	0
Creditos que dijo pendientes el G'ral Micheltorena	5,232	4	0
Secretario de gob'o D'n Jose Ma. Cobarrubias	180	0	0
Yd. de id., lesante D'n Manuel Jimeno	50	0	0
Goleta California por alcances del capitan	187	0	0
Tesoro departamental	166	0	0

Escribiente de la tesoreria	82	0	0
Gastos de dicha oficina	10	0	0
Alferez auciliar D'n Juan B'ta Castro	379	4	0
Com'te de escuad'n auciliar D'n Jose Ant'o Carrillo	31	0	0
Comp'a presidial de S. Francisco	1,124	1	1
Ten'te coronel de cab'a p'tt D'n Mariano G. Vallejo	625	0	1
Capitan auciliar D'n Jose Ma. Villa	82	3	0
Corres	71	0	0
Compania de Monterey	4,690	0	0
Ten'te auciliar D'n Felipe Butron	70	0	0
84 Compania de artilleria	209	4	1
Ten'te de cab'a activa D. Antonio Somosa	12	0	0
Yd. retirado D'n Jose Estrada	25	0	0
Attro cesante del g'ral sup'or de justicia D'n Jose Ant'o Carrillo	124	0	0
Secretario de la prefe'ta del 2 distrito	80	0	0
Escrib'te de la s'ria de gob'o por al cance D'n Pedro Estrada	12	2	0
Suma total	$32,565	7	3

Comparacion :

Ymporta el cargo	43,401	3	6
Ydem la data	32,565	7	3
Resultan	$10,835	4	3

Nota.—1a. Los gastos de guerra son por la compra de plomo, polvora y balleta para cartuchos.

2a. Los gastos estraordinarios provienen por 6,000 p's que costo el flete de un buque que llebo a D'n Andres Castilleros al puerto de Acapulco comicionado por el supremo gob'no; 1,400 p's que al mismo Senor Castilleros se le dieron paragastos de su viage; 800 pesos por 100 caballos que a D'n Mariano Guadalupe Vallejo, compro la comand'a g'ral; 1,385 p's 3 r's que a varios individuos se han pagado, por orden del E. S. gob'r del departam'to, por aucilios que facilitaron a las fuerzas que tomaron las armas en
85 contra del G'ral Micheltorena, y en favor de la e'a asamblea departamental; 648 pa. pagados al S. consul Yngles, D'n Diego Flores, por igual contidad que la compania de Hutson facilito en lanzas al Sor comand'te g'ral D'n Jose Castro, en Diciembre de 1844, para armar a los vecinos contra del gob'no del G'ral Micheltorena; 869 p's que el Sor comand'te g'ral ha gastado en composturas de fuerzas, y otros varios articulos; 453$ 4 r's que se dieron a tres individuos por orden del gov. comandante g'ral por haber salido en comision hasta el grado 43.

3a. La ecsistencia esta del modo siguiente 9,020 $ 3 r's 4 g's. Que se han remitido al E. S. gobernador del departam'to y aun no mando la distribucion; 1,815$ 0 r's 11 g's que el Sr. comanda'te g'ral tomo para las tropas que marcharona a Sonoma y hasta su vuelta no para la distribucion.

Los totales demostrados de cargo, data y existencia son iguales a los que produjo el estado corte de baja practicado en esta fecha con intervencion del S. prefecto de este distrito, C. Manuel de J. Castro.

Monterey, May 1o de 1846.

JOSE ABREGO.

86 Vo. Bo. Castro, comand'a g'ral.

A D'n Ygnacio Esquer y D. Benito Diaz que pasania ese puerto se servira V. S. entregarles todas los ecsistencias que haya en la tesoreria de su cargo para, que las conduscan a este punto segun las ordenes que llevan de esta comanda. g'ral.

Estos s'ores llevan la orden de agenciar plata en cambio de los efectos, procurando que sea con la menor perdida posible; lo que aviso a V. S. a fin de que por su parte haya lo mismo, en la inteligencia que se preferiva a la persona que mas ofresca.

Dios y libertad. Cuartel g'ral en S'ta Clara, a Julio 2 de 1846,

JOSE CASTRO.

Sr. Tesorero Dep'l D. Jose Abrego.

Recibi de el Sor tesorero departamental la cantidad de mil novecientos catorse pesos cuatro reales, (1,914 $ 4 r's), en efectos, pa conducirlos al cuartel g'ral.

Monterey, Julio 6 de 1846.

BENITO DIAZ.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

87 I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the four preceding and hereunto annexed pages of written paper, numbered from one to four, inclusive, exhibit a true, full, and correct copy of three original documents as contained in a bound book, entitled "Departamental State Papers," "Benicia Departmental Payments, vol. II," as the same appears on file among said archives.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 21st day of February, 1861

[SEAL]

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

KEEPER OF ARCHIVES.

Endorsed : Filed March 4, 1861.

W. H. CHEVERS, *Clerk.*

88 *"B," attached to dep'n of R. C. Hopkins.—J. W. No.* 1. *Depo. Pio Pico.*

Pio Pico, gobernador constitucional de el departamento de Californias:

[SEAL.] Por cuanto D'n Jose Andrade, Mejicano ha solicitado para su beneficio personal un terreno de seis sientas varas encuadro situado al frente de la mision de S. Francisco de Asis, que abrasa desde la huerta hasta pasada la curtiduria; practicadas previamente las diligencias que han sido necesarias usando de las facultades con que me hallo autorisado por el supremo gobierno a nombre de la nacion Mejicana, he venido por derecho de este dia en consederle la propiedad de el en virtud de los presentes letras, con arreglo a la ley de 18 de Agosto de 1824 y reglamento de 21 de Nobiembre de 1828, aseserva de la aprovacion de la ex'ma: asamblea departamental y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travesias, caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso y cultivo que mas le convenga. J. W.

89 2a. Solicitara del juez respectivo la posesion juridica en virtud de este despacho por el cual se le demarcaran los linderos con las respectivas mojoneras.

3a. El terreno de que se hace donacion es de seis cientas varas en cuadro, y es el que ocupaba la mision de San Francisco con una huerta de arboles frutales y la curtiduria. El juez que le diere la pocesion lo hara medir con arreglo a ordenanza y a vista de el diseno que presentara el interesado.

En consecuencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en el libro a que corresponde para su resguardo y demas fines. Dado en la ciudad de los Angeles, en papel comun por no haber sollado, a seis de Mayo de mil ochocientos cuarenta y seis.

PIO PICO.
JOSE MATIAS MORENO, *S'rio Yn'to.*

Queda tomada razon de este superior despacho en el libro respectivo.
MORENO.

En la ciudad de los Ange's del departamento de California a los nueve dias del mes de Agosto de mil ochocientos cuarenta y seis ante mi el
90 infrascrito juez primero interino comparecio Don Jose Andrade a quien doy fe conose y digo: que por la presente otorga que vende y de en venta real y enagenacion perpetua al Sor. Don Abel Stearnes y a los suyos el sitio que consta en el antecedente titulo situado al frente de la mision de San Francisco de Asis y consta de seis cientas varas en cuadro cuya venta la hace por la cantidad de cien pesos que tiene recibidos a su satisfaccion, declarando que el repetido sitio esta libre de todo gravamen, y que sera cierto y segun al comprador de lo cual val responsable. Y a la firmeza de lo referido obliga su persona y bienes presentes y futuros, y con ellos se somete al fuero de los Senores Jueces que en este negocio devan conocer para que lo apremien a su cumplimiento como por sentencia definitiva de juez competente pasada en autoridad de cosa juzgada consentida y sus mas recurso, en cuyo testimonio asi lo otorgo y firmo con ruego y dos de asistencia segun derecho no hay papel sellado.

LEONARDO COTA.
JOSE ANDRADE.

Ass'a: Y'go Goronel.
Manuel Ennigeses.

No. 94. Abel Stearns, San Francisco de Asis or Dolores. Document marked J. W. No. 1, annexed to the deposition of Pio Pico, taken before Comm'r James Wilson.

Filed in office Sept. 27th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Book of Rec. of Ev., vol. XVI, pages 235 and 236.
GEO. FISHER, *Sec'y.*

Office of the Surveyor General of the
United States for California.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory
92 or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the four preceding and hereunto annexed pages of tracing paper, numbered from one to four, inclusive, exhibit a true, full, and correct copy of an original document filed in case No. 94 on the docket of the board of land

commissioners aforesaid, together with the endorsement thereon, as the same now appears on file in my office among the archives of said board, and in my charge and custody.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 20th day of February, 1861.

[SEAL.]

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

KEEPER OF ARCHIVES.

Endorsed: Filed March 4, 1861.

W. H. CHEVERS, *Clerk.*

93 *Exhibit "C," attached to deposition of R. C. Hopkins.*

MONTEREY, *Junio* 10 *de* 1846.

Por presentada y admitida la presente instancia en cuanto ha lugar en dro's prosedase a espedir las correspondientes botelas de comparendo para que el jueves diez y ocho del corriente se presenten en el rancho que se cita para proseder a la posesion juridica que se pide los senores colindantes. Asi yo Ygnacio Esquer regidor decano del y'tre ayuntamiento y alcalde primero en turno de esta municipalidad con funciones de juez de primera instancia lo posovey y firme con los testigos de asistencia con quieres actuo por reseptoria a falta absoluta de escribano publico.

YGN'O ESQUER.

A.: AMBROCIO GOMEZ.
A.: BENITO DIAZ.

A los doce dias del mismo mes y ano en vista de hayarse en este puerto el C. Manuel Jimeno colindante del rancho de los Corralitos, se le estendio su boleta de compasendo quedando estado para el dia que se indica y para que conste lo siento y firmo con los de asistencia.

YGN'O ESQUER.

A.: AMBROCIO GOMEZ.
A.: BENITO DIAZ.

94 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the two preceding and hereunto annexed pages of tracing paper, numbered from one to two, inclusive, exhibit a true, full, and correct copy of a portion of the record of juridical possession filed in case No. 174 on the docket of said board of commissioners, for Rancho Corralitos.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 21st day of February, 1861.

[SEAL.]

J. W. MANDEVILLE,
95 *U. S. Surveyor General for California.*

Examined and found correct.

KEEPER OF ARCHIVES.

Endorsed: Filed March 4, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit "D," attached to the deposition of R. C. Hopkins.

MINISTERIO DE JUSTICIA E INSTRUCCION PUBLICA, 683.

E. S.: Ha llegado a noticia del E. S. presid'te que el gobierno de ese departam'to ha dispuesto sacar a publica subasta todos los bienes pertenecientes a las misiones del mismo, que el antecesor de V. E. habia mandado devolver a los respectivos misioneros para el manejo y adm'on de sus temporalidades; en consecuencia se ha servido prevenirme que ese gobierno se sirva informar sobre estos particularles, suspendiendo desde luego todo procedim'to en cuanto a enagenacion de los bienes de que se trata, hasta la resolucion del spm'o gobierno.

Tengo el honor de decirlo a V. E. con los fines indicados, protes-
96 tandole mi consideracion y aprecio.

Dios y Libertad. Mejico, Noviembre 14 de 1845.

MONTESDIOCA.

E. S. Gobernador del Dep'to de Californias.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the one preceding and hereunto annexed page of written paper, numbered one, inclusive, exhibit a true, full, and correct copy of an original document as contained in a bound book, entitled "State Papers, vol. II, Mission and Colonization," as the same appears on file among said archives.

97 In testimony whereof, have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 21st day of February, 1861.

[SEAL.]

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

KEEPER OF ARCHIVES.

Endorsed: Filed March 4, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit "E," attached to deposition of R. C. Hopkins.

Se dio cuenta igualmente con lo siguiente una comunicacion oficial del ministerio de relaciones f'ha 14 de Noviembre ultimo, dirigida al gobierno departamental en la que por disposicion superior se le pide informe sobre lo que haya determinado con respecto a misiones que se saben han sido puestos a publica su basta los bienes de ellas que se habian entregado a los padres para el manejo de temporalidades y que entretanto se de d'ho informe se suspenda toda prosedimiento en cuanto a enagenacion de los bienes referidos.

Se acordo por la corporacion que siendo esta nota directa al
98 gobierno del departamento se le devolviese para que manifestara su sentir y entonces pudiera atenderse el asunto.

SESSION DE 13 DE MAYO DE 1846.

Aprovada la acta de antier se dio cuenta con una comunicacion del superior gobierno en que es inserta una orden euprema que se le dirsjio relativa a

pedir informe del estado de las misiones suspendiendo entretanto lo que sobre ellas se hubiera determinado cuya nota del gobierno se reduce a consultar lo que debera hacerse en concepto de que por su parte le parece que le mas conforme sea lo dispuesto hasta aquel para evitar una tatal e irrepable ruina de los establecimientos mas no obstante la corporacion direa se mando pasar a la comision de misiones.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory
99 or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the two preceding and hereunto annexed pages of written paper, numbered from one to two, inclusive, exhibit a true, full, and correct copy of a portion of the proceeding of the departmental assembly of California, on the 13th April and 13th May, 1846, as the same appears of record among said archives.

In testimony whereof, I have hereunto signed my name officially and caused by seal of office to be affixed, at the city of San Francisco, this 21st day of February, 1861.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

KEEPER OF ARCHIVES.

Endorsed: Filed March 4, 1861.

W. H. CHEVERS, *Clerk.*

100 1846.

Exhibit "F," attached to deposition of R. C. Hopkins.

600 v. en cuadro en la Mision de San Francisco consedido a Jose Andrade. No. 552.

Librese por la secret'a de gob'o el titulo respectivo al interesado.

PICO.

[SEAL.] ANGELES, *Mayo* 5 *de* 1846.

EXMO SOR: Jose Andrade, Mejicano por nacimiento en residente en este departamento, ante V. E. como mejor proseda y halla lugar en derecho espone: que habiendo un pedase de tierra valdio en la ex-mision de San Fran'co al frentedel establecim'to a donde estaba la huerta de arboles frutales (los que ya no existen) cuyo terreno tendra de estencion de seis cientas varas hasta la curtiduria, sin pertenecer a propiedad particular ni corporacion alguna.

P. F. a V. E. suplico se sirba concederme lo en propiedad porviendo como llevo dicho en lo que recibire gracia y justicia jurando lo necesario, &'a.

Angeles, Mayo 4 de 1846.

JOSE ANDRADE.

101 ANGELES, *Mayo* 6 *de* 1846.

Vista la antecedente solicitud, con todo lo demas que se tubo presente, ver y meditar convino, usando de las facultades con que me hallo autorizado por el supremo gobierno a nombre de la nacion Mejicana, he venido por las

presentes letras en declarar, como declaro, al Sor. Jose Andrade, dueno en propiedad de un terreno de seicientas varas de labor que existe en la exmision de San Francisco, frente al mismo establecimiento, cuyo terreno de labor, es el mismo en que anteriormente existie una huerta de arboles frutales, y se estiende hasta la curtiduria Libresele en consecuencia el titulo respectivo que asegure su propiedad y reservese el espediente para someterlo a la aprovacion de la ex'ma asamblea departamental.

Pio Pico, gobernador constitucional del departamento de Californias, asi lo mando decreto y firmo doy fe.

PIO PICO.
JOSE MATIAS MORENO, *S'rio Ynr'o.*

Pio Pico, gobernador constitucional del departamento de Californias:

Por cuanto D'n Jose Andrade, Mejicano, ha solicitado para su bene-
102 ficio personal el terreno de 600 varas en cuadro situado al frente de la mision de S'n Francisco de Asis que abrasa desde la huerta hasta pasada la curtiduria practicadas previamente las diligencias que le han sido necesarias, usando de las facultades con que me hallo autorizado, por el supremo gobierno a nombre de la nacion Mejicana, he venido por decreto de este dia en concederle la propiedad de el espresado terreno, declarandole la propiedad de el en virtud de las presentes letras con arreglo a la ley de 18 de Agosto de 1824, y reglamento de 21 de Nov'e de 1828, a reserva de la aprovacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travecias, caminos y servidumbres, lo disfrutara libre y exclusivamente destinandolo al uso y cultivo que mejor le convenga.

2a. Solicitara del juez respectivo le de la posesion juridica en virtud de le este despacho, por el cual se le demarcaran los linderos con las repectivas mojoneras.

3a. El terreno de que se le hace donacion es de seicientas varas en cuadro, y es el que antes ocupaba la mission de San Francisco, con
103 una huerta de arboles frutales que se estendia hasta la curtiduria. El juez que le diere posecion lo hara medir con arreglo a ordenanza y vista del diseno que presentara el interesado. En consecuencia mando, que teniendose el presente titulo por firme y valedero se tome razon de el en el libro en que corresponde y se entregue al interesado para su resguardo y demas fines. Dado en la ciudad de los Angeles en papel comun por no haber sellado, a 6 de Mayo de 1846.

PIO PICO.
JOSE M. MORENO, *S'rio Ynt'o.*

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the
104 six preceding and hereunto annexed page of tracing paper, numbered from one to six, inclusive, exhibit a true, full, and correct copy of an original espediente now remaining on file among the archives aforesaid in my office, "entitled" 1846, "600 v's en cuadro en la mision de San Francisco, consedido a Jose Andrade, No. 552," the same being still in my charge and custody.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 21st day of February, 1861.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

KEEPER OF ARCHIVES.

Endorsed: Filed March 4th, 1861.

W. H. CHEVERS, *Clerk.*

105 *Dep. of Ambrosio Gomez, on part of U. S.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this eleventh day of Feb'y, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Ambrosio Gomez, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: Eugene Lies and C. Benham for U. S., Sidney L. Johnson
106 for claimants.

Questions in behalf of the United States.

Question 1st. What is you name, age, residence, and occupation?

Ans. Ambrosio Gomez; 38 years; Monterey; sometimes I work in a printing office, sometime in an apothecaries shop.

2. Did you know Jose Andrade?

Ans. Yes.

3. At what time were you first acquainted with him?

Ans. I can't state dates exactly, but I knew him at Monterey shortly after the departure of Micheltorena.

4. Where did he then reside?

Ans. He had come from Santa Barbara, and from that time resided in Monterey.

5. What countryman was he?

107 Ans. I don't know.

6. Up to what time did he then reside in Monterey?

Ans. Up to the going forth of Alvarado and Prefect Manuel Castro against the forces of Fremont.

7. Were you one of the forces under the prefect?

Ans. I was not at the time that Andrade went forth.

8. Was Andrade one of them?

Ans. Yes.

9. How long did he continue in such service?

Ans. I saw him continue in such service up to San Lorenzo; afterwards I heard that he had gone towards Los Angeles.

10. On that occasion did the forces go to San Lorenzo?

Ans. We went to support Joaquin Della Torre, at San Lorenzo.
108 We met him in the street, and the whole force, with that of Della Torre, returned to Santa Clara.

11. How long did you remain with this force?

Ans. I remained two or three days, as near as I can remember, with the force at Santa Clara. I was then sent on a commission to Monterey.

12. State, if you can, the date of your arrival at Monterey or any circumstance through which such date can be fixed.

Ans. One or two days after my arrival at Monterey, on such commission, the American flag was hoisted. I then went to Esquers, who had the command of such commission, for orders, and he told me it was not worth while for me to move, since the Americans had taken Monterey. From that circumstance my return must have coincided with the 7 of July.

13. How long before that date was it that Andrade joined the forces?

109 Ans. Andrade joined the forces when they first started from Monterey, and I saw him continue with them until I left at Santa Clara on the commission aforesaid.

14. What was the occupation of Jose Andrade?

Ans. Carpenter.

15. Did you ever know of his cultivating the soil?

Ans. No, never.

16. Do you know of his ever coming to Yerba Buena or San Francisco?

Ans. No.

17. Were you intimate with him?

Ans. Yes.

18. If he had had a grant of land would you have been likely to know of it?

(Objected to as leading and incompetent.)

Ans. It is not likely that I should know. It was not a matter of
110 course that we should know of each other's grants of land.

19. Look at pages 263, 264, 265, and 266 of volume 2 of Departmental State Papers, marked "Payments," and state if you know the handwritings, signatures, and other attending circumstances; and if so, state the same.

Ans. The body of this document, which is a balance sheet dated May 1, 1846, of the treasury of the department of California, is in the handwriting of my brother, Vicente Prefecto Gomez, who was first clerk of the treasury.

20. Where did your brother, V. P. Gomez, reside at that date, and where was he during the first part of 1846?

Ans. He lived in Monterey when he held that office. He was in Monterey in the beginning of 1846. He also joined the forces of Alvarado.

21. How long did he continue with those forces?

111 Ans. He continued with those forces up to their arrival at San Angeles.

22. Did he go to Los Angeles at any time in 1846, previous to his arrival there with such forces?

Ans. No.

23. Look at expediente 552 and state if you know in whose handwriting the petition is, and your means of knowing the same.

Ans. I am not acquainted with the handwriting. I have seen several that looked like it, and I cannot state exactly.

24. Where were Jose Andrade and your brother, V. P. Gomez, at the date which this petition bears, viz: 4 May, 1846?

Ans. In Monterey.

25. Look at document H. H. No. 1, annexed to the deposition of Jose, in case No. 174, land commission, in the claim of Jose Ameste for a tract of land called "Corralitos," and state its purport and any facts that you may be acquainted with in relation thereto.

112 Ans. This is a document of juridical possession, given to Jose Ameste by Ignacia Esquer, alcalde. It is in my own handwriting; my signatures, where they appear there, are genuine. So are all the rest. The dates are the true dates. The signatures at page 19, of Benito Diaz, are his own genuine signatures. I don't know when he placed them there. About the time when the juridical possession was being concluded the prefect passed through Amiste's ranch with forces. That was the place where I joined the forces, and I think that *the forces, and I thiuk that* Benito Diaz may, on his passage through, have given his signatures. Benito Diaz was with the forces, for I saw him in Santa Clara.

Cross-ex'd by claimants.

26. What was your occupation in the first part of 1846?

Ans. I was secretary of the court of first instance, of the ayuntamiento at Monterey.

113 27. Were you in Monterey from the beginning of the year until you joined the forces?

Ans. No. I went to the "Corralitos" to give juridical possession, and then joined the forces.

28. Was that the only time you were absent from Monterey in that year?

Ans. Before that I have been absent at the Rancho Pilarcitos or some other ranch near there, but my occupation was continual in Monterey.

29. How many days were you absent at any one time on a visit to the Pilarcitos or any other ranch in the neighborhood of Monterey?

Ans. I was absent at the Pilarcitos Rancho on the business of my office in giving judicial possession of that rancho. The time it took to give that possession, which may have been 3, 4, or 5 days. I went to other ranchos—as, for instance, to the rancho of my father—on leave, only one or two days at a time.

30. What was the occupation of Jose Andrade on the 1st months of 1846?

114 Ans. At that time he had no occupation.

31. How did he pass his time?

Ans. He lived there among all his friends, and I know that he did not want means of living, but did not know whence he got them.

32. Was he at any time absent from Monterey before he joined the forces?

Ans I don't recollect that he was. I was constantly seeing him there.

33. Can you swear that he was not absent from Monterey at any time in the first part of 1846, for one, two, or three weeks, except on joining the forces as you have stated?

Ans. Yes.

34. Did you see him every day?

Ans. I saw him every day at the billiard-room of Mr. Alrego in Monterey.

35. How does it happen that you can recollect, with so much certainty, seeing him at that room every day?

115 Ans. Because it was the only place of meeting in Monterey.

36. Is that your only reason for recollecting that you met him there every day?

Ans. Yes.

37. Was not that a general place of meeting at Monterey when you saw all the people of the place?

Ans. It was.

38. Can you say at present who of all the then citizens of Monterey were always present at that place of meeting?

Ans. I cannot say who were always there, but I can tell who were there most constantly.

39. When did you go to give juridical possession to the rancho of the Pilarcitos?

Ans. I do not remember.

40. Where is Andrade at present?

Ans. I don't know whether he is still living.

116 41. How do you know he was a carpenter by trade?

Ans. He told me, and afterwards a son of Don Jose de la Guerra told me.

42. Did you ever see him work at his trade?

Ans. No.

43. How long did he stay in Monterey altogether?

Ans. From the time that he first came there, shortly after the departure of Micheltorena, saying that he came from Santa Barbara, until he went away with the forces of Alvarado and Castro.

44. You have said that you joined these forces at the rancho of Amertes, "Corralitos," immediately after giving juridical possession of that rancho. In what direction did you then march with the forces?

Ans. We went from there to Santa Cruz, and from there to Santa Clara.

117 45. Whence did these forces come at that time?

Ans. I don't recollect whether these forces came directly from San Juan or directly from Monterey. There were several parties. The one I joined was a party under the prefect, Manuel Castro. We went to Santa Cruz to recruit, and thence over the mountains to Santa Clara, where we joined the main force.

46. Was Andrade with this main party that came to the rancho of Amerte?

Ans. I think not. I saw him enlist at Monterey; then I met him at Santa Clara. We went to San Lorenzo, and returned to Santa Clara together. After that I left Santa Clara on the commission to Monterey.

47. When did you next see Andrade?

Ans. I don't recollect to have seen him any more after leaving him at Santa Clara.

48. You have said that Benito Diaz was at the "Corralitos." Did
118 he go there for the purpose of assisting as witness at the juridical possession?

Ans. I do not recollect to have seen Benito Diaz at the "Corralitos." I only recollect to have seen him at Santa Clara afterwards.

49. Do you know when or where he gave his signature to the document of juridical possession referred to?

Ans. I don't remember.

50. You have said Andrade joined the forces when they first started from Monterey, and I saw him continue with them until I left Santa Clara on the commission aforesaid. How could you know anything of his continuing with them from the time they left Monterey until you joined them at Santa Clara?

Ans. I only know from seeing him leave Monterey equipped for the campaign with the forces, and meeting him afterwards with them at Santa Clara.

Direct ex'n resumed.

51. Look at the several pages marked 236 of vol. 2, Departmental
119 State Papers, entitled "Payments," and state the purports of the two documents there, by whom signed, and what was the occasion of writing those documents if you know it.

Ans. I don't know the handwriting of the body of the first document. The signature is that of Jose Castro, commander-in-chief of the forces. This document refers to the commission of which I speak in my deposition. I don't know in whose handwriting the body of the second document is. It seems to be Benito Diaz. The signature is his.

52. You have spoken of a commission on which you were sent to Monterey. What other persons went with you, and what was the object of the commission?

Ans. The object of the commission was to take the effects in the treasury. Those that went with me were Ignacio Esquer, Benito Diaz, Santiago Estrado, and one more whom I have forgotten.

Deposition closed.

AMBROSIO GOMEZ.

120 Sworn to and subscribed before me February 11, 1861.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed March 4, 1861.

W. H. CHEVERS, *Clerk.*

121 *Deposition of Manuel Castro on part of United States.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this eleventh day of Feb'y, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Manuel Castro, a witness produced in behalf of United States, in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: Eugene Lies and Calhoun Benham, esq., for the U. S.; Sidney Johnson, esq., for claimants.

122 *Questions in behalf of the U. States.*

Question 1st. What is your name, age, residence, and occupation?

Ans. Manuel Castro; 39 years; San Francisco; business agent.

Ques. 2d. Look at pages 263, 264, 265, and 266 of volume 2 of Departmental State Papers, entitled "Payments," and state if you are acquainted with its handwritings, signatures, and other attending circumstances. And if so, state the same.

Ans. This document is a balance-sheet of May 1st, 1846, of the departmental treasury. It is approved by me as prefect of the 2d district of California, which office I then held. The handwriting of the whole body of the

document is that of Vicente Gomez. I am well acquainted with his handwriting, because we had friendly relations. He was employed in the public offices at Monterey, where I had access, and sometimes assisted me in my writings as prefect. The signature of Jose Alrego is genuine. He was the treasurer. Vicente Gomez, at this time, was clerk in the treasurer's
123 office. This document is an official document.

Ques. 3d. Look at expediente 552, and if you are acquainted with the handwritings therein, state whose they are.

Ans. The body of the petition is in the handwriting of Vicente Gomez.

Ques. 4th. Look at document marked J. W. No. 1, annexed to the deposition of Pio Pico, taken in this case before Commissioner James Wilson, and state if you know the handwriting in the body of the grant, and also what means you have of knowing such handwriting.

Ans. It appears to be in the handwriting of Benito Diaz, so far as I have any recollection of his way of forming letters; as he also lived in Monterey, I have often seen letters and documents written by him.

Cross-ex'd by counsel for claimants.

124 Ques. 5th. Have you ever seen Benito Diaz write?

Ans. I have seen him write. He lived between Monterey and San Francisco since about 1838.

Deposition closed.

MANUEL CASTRO.

Sworn to and subscribed before me this 11th day of Feb'y, 1861.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed March 4, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of Eugenio Montenegro, on part of United States.

In the district court of the United States for the northern district of California.

THE UNITED STATES } *vs.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 21st day of Feb'y, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H.
125 Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the court of the United States pursuant to the acts of Congress in that behalf, personally appeared Eugenio Montenegro, a witness produced in behalf of United States inthe above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: Eugene Lies for U. States; for C. Benham, U. S. dist. att'y; S. Johnson for claimants.

Questions in behalf of the U. States.

Question 1st. What is your name, age, residence, and occupation?

Ans. Eugenio Montenegro; 52 years; Napa Valley. I was in the Mexican service in Lower California; came here on leave, and was taken sick; I am a captain in the Mexican service.

126 Ques. 2. Where were you at the beginning of 1846?

Ans. In Monterey.

Ques. 3d. Do you know John C. Fremont, and when did you first know of him?

Ans. I first knew of him in May, 1846. He was at the Peak of Gavilan when we were at San Juan Bautista, in opposition to him under command of Col. Castro. When I say "we" I mean the people of California at the north here. We were in arms.

Ques. 4th. How long did such force then remain in the field?

Ans. More or less about three or four days, because when a sufficient force got together Fremont went away.

Ques. 5th. Did you follow him.

Ans. No; the force got dispersed when it was known he had gone towards Sacramento.

Ques. 6th. Was there any movement of California troops that year
127 that you know of?

Ans. A litttle after, Fremont we learned came back to Sonoma, whereupon the forces made a movement northward to San Lorenzo, in Contra Costa. Thence we countermarched to Monterey, and did not enter it because the American squadron was there already in July, 1846. Thence we proceeded towards to Los Angeles. We reached the town about the latter part of July. We remained there until the 11th August, when we started for Sonora. When I say "we started" I mean Commandant General Jose Castro, with 22 companions.

Ques. 7th. Do you know Jose Andrade?

Ans. Yes; he was one of our companions from the first occurrences I have mentioned here until we got to Mazatlan, where we left him in February, 1847, with Col. Telles, commandant general of Sinaloa.

Ques. 8th. Before the time of these occurrences did you know Jose Andrade, and whe re was he?

128 Ans. Yes; he was in Santa Barbara.

Ques. 9th. Did he remain any time in Santa Barbara.

Ans. Yes.

Ques. 10th. Where was he when he joined the forces at the time you have mentioned?

Ans. He was in Monterey before the commencement of the difficulties in 1846.

Ques. 11th. How long had he been in Monterey before those difficulties?

Ans. I am not sure, but I believe in 1843. It must have been 1843, because in 1844 I was in San Francisco, and left Andrade there when I came to San Francisco.

Ques. 12th. Do you know Benito Diaz?

Ans. I do.

Ques. 13th. Where was he during the difficulties you have related?

Ans. He was with us, an officer in the troop since 1837.

129 Ques. 14th. Where was Benito Diaz, when you went to San Juan Bautista in opposition to Fremont?

Ans. He was with us under Col. Castro.

Ques. 15th. Where was he when you went to San Lorenzo?

Ans. He was with us.

Ques. 16th. How long did he continue with you from that time?

Ans. Until August, when we parted with him at Los Angeles, in 1846.

Ques. 17th. Did you know Vicente Perfecto about this time, and where was he?

Ans. I did. He accompanied us to Los Angeles.

Ques. 18th. Was he with you in the first march against Fremont?

Ans. Yes.

Ques. 19th. State, if you remember, where Jose Andrade was for a month or two immediately previous to your march against Fremont.

130 Ans. In Monterey.

Ques. 20th. What was Andrade's occupation?

Ans. He was aggregated to our troop, and as he resided in Santa Barbara, I don't know what his occupation was.

Ques. 21st. What was his occupation in Monterey during the time immediately previous to your expedition against Fremont?

Ans. He was there as a transient person, because his residence was in Santa Barbara.

Ques. 22d. How long previous to the expedition against Fremont did Andrade remain as a transient person in Monterey?

Ans. I do not remember exactly, but I saw him there some 3 or 4 months before that time.

Cross-ex'd by claimants.

Ques. 23d. State, if you please, where you were from 1843 up to the time of the expedition against Fremont in 1846, and how long in each

131 place, as nearly as possible.

Ans. In 1843 I was in Monterey the whole of that year. In 1844 I was in San Francisco up to the month of November of that year. In November, 1844, I left San Francisco for San Jose, and went from there with the forces, in the difficulties that then existed with Micheltorena, governor of California. I was with the troops under Col. Castro, and we marched towards Los Angeles. We arrived at Los Angeles and then marched to Cahuenga, where we had the action with Gov. Micheltorena. This was about the end of January or the beginning of February, 1845. From Cahuenga we returned to Monterey, where we arrived in the latter part of February; there I remained until May, 1846, when the occurrences I have before spoken of commenced.

Ques. 24th. Were you in the military service all this time?

Ans. Yes.

Ques. 25th. When did you first return to San Francisco after you

132 left it in November, 1844?

Ans. In September, 1848.

Ques. 26th. Can you mention the principal persons who accompanied Gen'l Castro in August, 1846, from Los Angeles to Sonora? If so, give their names.

Ans. I can. I have a list of all of them. I will name as many as I can recollect. Juan N. Padillo, Guadalupe Soberanez, Jose Maria Soberanez, Jose Andrade, Marcos Alanis, Eugenio Martinez, Manuel Castro, Alias Chanate, Salomon Pico, Manuel Martes, an officer named Servin Manuel Cantua, Jose Ramon Carrillo Domingo Feliz, Antonio Ochoa, a young man called Julian Juan Manuel Salaya, (he was our guide,) Manuel Reducindo Castro, brother-in-law of the general, myself and Gen'l Castro; the others whose names I escape me. One Rosas was another, Domingo Mesa another.

Ques. 27th. Was Gov. Pio Pico of that party, or of another, and what became of him?

133 Ans. At the same time that we left Los Angeles for Sonora, Gov. Pico left for Lower California. Pico's secretary, Jose Martias Moreno, accompanied him. I don't know whether he had any escort, because we parted company during the night at the plaza of Los Angeles.

Ques. 28. Did you ever receive a grant of land from the Mexican government of California? If so, state the date the date of the grant and the name, situation, or other description of the land granted.

(Objected to by U. S. as irrelevant, incompetent, and because if the witness is a claimant under a grant, the question tends to make him a witness in his own cause.)

Ans. I had a concession of eight leagues in the district of Sonoma made to me in 1844, called "Caslamayomi." This is the only grant of a rancho I have from the government. I have a house and lot in Monterey, which is now the site of the Washington Hotel. This is the only lot I had
134 in Monterey. I had another in San Francisco. The one I had in San Francisco was fifty-vara lot number 6, also granted to me in 1844. I conveyed lot No. 6 to Mr. Larkin first. Afterwards there was a litigation about it, and a gentlemen got from me a power of attorney about it, promising to settle soon with me for it, but he has not to this day. This was in 1852.

Ques. 29th. Did you take possession of this lot in San Francisco, No. 6, in 1844?

Ans. Yes.

Ques. 30th. Did you not some time in the year 1845 make an application to the alcalde or other municipal authority of San Francisco, excusing yourself for not having taken possession before, and asking them to be put in possession?

(Objected to by U. States.)

Ans. I did not make any application in 1845, and it was not necessary, because I had possession by four stakes.

135 EUGENIO MONTENEGRO.

Subscribed and sworn to before me this 21st day of Feb'y, A. D. 1861.

W. H. CHEVERS, *U. S. Com'r.*

Examination of witness Eugenio Montenegro continued by consent to February 22d, 1861, 10 o'c'k a. m.

FEB'Y 22D, 1861.

The above deposition was closed without further examination.

W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed March 4, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of Andres Pico, on part of United States.

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ABEL STEARNS. } In land cases—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 21st day of May, A. D. 1861, at the
136 city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Andres Pico, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by the counsel by consent.

Present: Messrs. W. H. Sharp, U. S. att'y; Eugene Lies and John W. Dwinelle for the U. S.; Sidney L. Johnson, esq., for the claimant.

Questions in behalf of the United States.

Ques. 1st. What is your name, age, and place of residence?

Ans. My name is Andres Pico; my age is 50 years, and I live in Los Angeles.

Ques. 2d. Where were you born?

137 Ans. At San Diego, California.

Ques. 3d. Where did you live up to 1846?

Ans. A part of the time at San Diego and at Los Angeles.

Ques. 4th. Did you hold any civil office under the Mexican government of California?

Ans. I did; I served as a commissioner in company with another person to form the inventories of the properties of the missions in the year 1845.

Ques. 5th. State briefly your action as such commissioner.

(Objected to, on the ground that his action should be made to appear by the production of the inventories.)

Ans. I inventoried all the property, live stock, edifices, gardens, and lands of the missions.

Ques. 6th. Did you proceed to each mission?

Ans. I did personally.

138 Ques. 7th. About what time of the year did you, in the discharge of your official duty, visit the Mission Dolores or San Francisco de Asis?

Ans. I am not very certain, but it was about the month of August of the year 1845.

Ques. 8th. Did you endeavor to ascertain what real estate then belonged to said mission? If so, what steps did you take to ascertain the same?

(Question objected to as leading in form, and also on the ground that it is not the best evidence which the nature of the case admits of and that his action in the premises should be made to appear by the inventories themselves.)

Ans. I did endeavor; I made enquiry of the person in charge of the mission, and of various persons residing there.

Ques. 9th. To whom did you ascertain that land to belong which lies in front of the mission building and to the right and left hand of one standing at the main door of the church, looking towards the estuary?

139 (Objected to, because the evidence called for is not the best evidence, and is incompetent.)

Ans. I ascertained by reports that there was a lot in front of the mission and to the right belonging to one Valencia, and to the left some little lots claimed by De Haro. The Sanchezs also claimed some lots; alse Guerrero.

(Answer objected to by counsel for claimant as incompetent and hearsay.)

Ques. 10th. State to whom the land described in my last question belonged aside from individual claim of lots.

(Same objection as to the preceding question.)

Ans. It belonged to the mission or it belonged to the government.

(Same objection as to the preceding answer.)

Cross-examination waived.

ANDRES PICO.

Sworn to and subscribed May 21st, 1861, before me,

W. H. CHEVERS, *U. S. Com'r.*

140 Endorsed: Filed May 21st, 1861.

W. H. CHEVERS, *Clerk.*

141 *Affidavit of E. Lies and notice of motion to strike from the record the dep. of Pio Pico.*

U. S. district court, northern district of California.

THE UNITED STATES } 262.
vs.
ABEL STEARNS. }

CITY AND COUNTY OF SAN FRANCISCO, *ss:*

Eugene Lies, of said city and county, counsellor-at-law, being duly sworn, says that he is employed with the assent of the U. S. district attorney to defend the above-entitled cause in behalf of the United States.

Deponent further says that one of the grounds of defence relied on by the United States is that the grant upon which claimant relies and which was introduced by him in support of his claim, and is referred to in the deposition of Pio Pico, a claimant's witness, as being marked "J. W. No. 1," is antedated. And also that a certain espediente found on file in the surveyor general's office and referred to in the deposition of R. J. Hopkins, taken in this court and in this cause, as No. 552, and relating to the claim in the above-entitled cause, is antedated.

142 Deponent further says that the above-mentioned espediente No. 552 was offered in evidence, not by the claimant, but by the United States, and that two of the papers in the said espediente purport to bear the original signature of said Pio Pico.

Deponent further says that it appears from the transcript of proceedings in this cause that while the said cause was pending in the land commission the deposition of Pio Pico was taken in behalf of claimant at Los Angeles on the 27 of September, 1852, as appears at pages 6 and 7 of said transcript, to which deponent hereby refers.

Deponent further says that he is well acquainted with said Pio Pico, and that the said Pio Pico is now in San Francisco and has been here about two months, his usual residence being Los Angeles, and that information of said Pico's presence in San Francisco has been conveyed by deponent heretofore to S. L. Johnson, esq., of this city, the counsel for claimant.

EUGENE LIES.

Sworn to and subscribed Aug. 21, 1861, before me.

W. H. CHEVERS, *U. S. Com.*

143 SIR: Please take notice that upon the foregoing affidavit and the papers in this cause, a motion will be made before the Hon. O. Hoffman, district judge in and for the northern district of California, on Saturday, the 24th inst., at the opening of the court on that day, or as soon thereafter as counsel can be heard, that the deposition of Pio Pico in the above-entitled cause be stricken out.

San F'co, Aug. 21, 1861.

Yours, &c.,

EUGENE LIES,
Of Counsel for the United States.

To S. L. JOHNSON, Esq.,
of Counsel for Claimant.

Due service of the above admitted.
S. F'co, Aug. 21st, 1861.

SIDNEY L. JOHNSON, *Att'y for Claimant.*

Endorsed: Filed Aug. 24, 1861.

W. H. CHEVERS, *Clerk.*

144 *Deposition of Jose M. Covarrubias, on part of United States.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ABEL SEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 8th day of October, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Jose Ma. Covarrubias, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private lands in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by counsel by consent.

145 Present: Eugene Lies, esq., and W. H. Sharp, U. S. att'y, for the U. S., and S. L. Johnson, esq., for claimant.

Questions in behalf of the United States.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Jose Maria Cobarrubias; I am 53 years old, and I reside in Santa Barbara.

Ques. 2d. Where were you at the beginning of 1846, and what office, if any, did you hold?

Ans. At the beginning of 1846 I was at Los Angeles, and I was secretary of the government of California.

Ques. 3d. Look at the paper now shown you, being the original of Exhibit H, attached to the deposition of R. C. Hopkins, and state, if you know, when and where it was made, by whom written and signed, and any other circumstances relating to the same that you may recollect.

Ans. This document was written at Los Augeles the 8th of January, 1846, by Francisco Lopez, who was a clerk in the office of the secretary of
146 state. It was signed by the governor, Pio Pico, whose signature I know well, and by myself. I recollect that this order was issued for the purpose of facilitating proceedings in cases of land grants and other proceedings of citizens with the government.

Ques. 4th. What has become of Francisco Lopez?

Ans. He is dead. I believe, without being able to state positively, that he died before 1850.

Cross-examination.—Questions by counsel for cl't.

Ques. 5th. State whether you have a distinct recollection of any other circumstance connected with said "bando" of 1846 than the general recollection which you have mentioned of its having been made to facilitate the business of the citizens with the government.

Ans. I have no recollection of anything else.

Ques. 6th. If you had not seen the document itself, would you have been

able to swear that such a document had been made at or about the time it bears date?

147 Ans. I could have done so.

JOSE M. COVARRUBIAS.

Subscribed and sworn to this 8th day of October, A. D. 1861, before me.
W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit H, annexed to the depo. of J. M. Covarrubias.

Pio Pico, vocal de cano de la asamblea departamental y gobernador provicional de los Californias, a sus habitantes saber.

[SEAL.] Que para los negocias publicos del departamento tengan su mas pronte despacho, he venido en disponer lo sigeinte.

Articulo unico. Todos los que hagan solicitudes sobre terrenos u otras, cuya resolucion penda del gobierno departamental, los dirigiran, en el distrito de Monterey, al sor. prefecto, y en el distrito de los Angeles, a los sub prefectos respectivos, quienes espedientarar, informaran y senutiran

148 dichas solicitudes, a la secretaria de gobierno.

Y para que llegue a noticia de todos, mundo se publique, circale, y se le de el debido cumplimiento.

Dado en la ciudad de los Angeles a 8 de Enero de 1846.

PIO PICO.
JOSE M. COVARRUBIAS, *S'rio.*

Deposited in the archives by Eugine Lies, on 22d day of August, 1861.
E. F. BEALE, *U. S. Sur. Genl.*

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beall, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California,

149 by virtue of the power vested in me by law do hereby certify that the preceding and hereunto annexed page of tracing paper, numbered from one to , inclusive, exhibit a true, full, and correct copy of an original document deposited by Eugene Lies and now on file among said archives.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 8th day of Oct., 1861.

[SEAL.]

E. F. BEALE,
U. S. Sur. General for California.

Examined and found correct.

KEEPER OF ARCHIVES.

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of R. C. Hopkins, on part of United States.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 8th day of October, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Che-
150 vers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: Eugene Lies, esq., and W. H. Sharp, U. S. att'y, for the U. S., and S. L. Johnson, esq., for claimant.

Questions in behalf of the United States.

Question 1st. Are you the same R. C. Hopkins who has formerly testified in this case?

Ans. I am.

Ques. 2d. Look at the paper now offered in evidence, marked Exhibit G, to be annexed to this deposition, and state what it is.

151 Ans. It is a certified traced copy of an order made by Governor Alvarado, dated Monterey 11th March, 1839, directed to the prefect of the first district requiring petitions for lands to be directed to the prefects, the original of which is on file in the archives under my charge.

Ques. 3d. Have you lately examined the original? And state, if you know, in whose handwriting it is and by whom signed.

Ans. I have. It is in the handwriting, I think, of Francisco Arce, and signed by Manuel Jimeno, secretary of state.

Ques. 4th. Look at the first page of Exhibit F, attached to the deposition of R. C. Hopkins. State what is there written; whether you have lately examined the original, and whether there exists in the Mexican archives under your charge any paper with a like endorsement, except the original of which Exhibit F is a copy.

Ans. The document referred to is endorsed upon the first page as
152 follows: "1846; 600 v. en cuadro en la mision de San Francisco concedido a Jose Andrade No. 552." There is no document in the archives save the original of which this exhibit is a copy, upon which there is a like endorsement.

Ques. 5th. Did the original of Exhibit F ever leave the surveyor general's office since you have been in charge of the archives? If so, when, and on what occasions?

Ans. I have brought the original of Exhibit F several times myself to the court, and I remember on one occasion that it was brought to the court by Mr. Theodore Snell, one of the clerks in the office of the U. S. surveyor; the date I do not remember, but I think it was some time in 1857.

Ques. 6th. Look at a paper now offered in evidence, of which a certified copy when procured will be attached to this deposition, marked Exhibit H, and state what it is, and whose is the handwriting, if you know.

Ans. It is an original "bando," dated the city of Los Angeles, 8th
153 January, 1846, signed by Governor Pio Pico and Jose M'a Cavarrubias, secretary of state, ordering petitions for lands to be directed to the prefects and sub-prefects in the southern district. The signatures of Pio Pico and Jose M'a Covarrubias appearing upon said document I think are genuine. The handwriting is, I think, that of Francisco Lopez.

Cross-examination.—Questions by counsel for cl'ts.

Ques. 7th. Look at the endorsement on the last-mentioned paper, and say what it is, by whom and when it purports to have been made.

Ans. Said paper is endorsed "deposited in the archives by Eugene Lies, on 22d day of August, 1861. E. F. Beale, U. S. sur. gen'l." This indorsement is in my handwriting, and the signature, "E. F. Beale," was made by himself.

Ques. 8th. Was said paper ever in the archives before the date of said endorsement?

Ans. It never was to my knowledge.

Ques. 9th. Is the Eugene Lies by whom it was deposited in the
154 archives, according to the endorsement, the same who now appears in this examination on behalf of the U. S.?

Ans. He is.

Ques. 10th. Do you know anything, of your own personal knowledge, respecting the previous custody of said paper?

Ans. I know nothing more than what I learned from Mr. Lies.

Ques. 11th. Do you know of any other trace in the archives of the existence of such a paper, or of such "bando?"

Ans. I do not.

Ques. 12th. What was the practice of the Mexican government of California when such "bandos" were made, with reference to their promulgation, to the retention of copies of the same in the archives of the government, or with reference to any other fact by which a trace of such action of the government might be left in the public archives?

(Objected to as incompetent.)

155 Ans. It was usual to retain in the office of the secretary of state a barrador of such document, exemplifications of which were transmitted to all the proper officers. The records which should remain in the secretary's office of such document would be the barrador of the same, or a record of the communications made by the secretary of state to the respective officers forwarding the exemplifications of such "bando." The promulgation would be made by the prefects sending copies to the sub-prefects, who in their turn send copies to the alcaldes, by whom they would be posted in public places. I do not remember to have seen in the archives any evidence of such promulgation of this "bando." The records of the official correspondence of the governors of California as found in the archives appear to be very full and complete from about the year 1775 down to the year 1844, both inclusive, excepting a few years between 1830 and 1840. After 1844 there are not found in the archives any systematic records of such correspondence; no records, in fact, of the same save such as are
156 found upon loose sheets, borradories, without any regularity, order, or system.

(Counsel for claimant objects to the introduction in evidence of said bando of 1846, on the ground that until the 22d August, 1861, there was no trace of the same in the archives, and that there is nothing showing that said bando

was ever promulgated according to law and the custom of the Mexican government of California at its date.)

R. C. HOPKINS.

Sworn to and subscribed this 8th day of October, A. D. 1861, before me.

W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed Nov. 9th, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit G, annexed to depo'n of R. C. Hopkins.

SECRETARIA DEL GOB'RO DEPARTAM'L ARCHIVESE, *Mar.* 11, '39.

El exmo. sor. gobernador: Me munda a V. S. que con esta fecha se espediran a los autoridades subaltermas del distrito del cargo de V. S. ejemplares, que se refieren uno de hellos, a la division del departamento en distritos segun el a cuerdo de la exma. junta, y otros a que las instancias, sobre terre-
157 nos, y ostras de esta clase se dirijan a la prefectura que corresponda, comunicandoles per separado, y en la misma f'ha a las referidas autoridades subalternas que en lo sucenio se entiendar directam'te por los oficinas que habla el decreto que arregla lo interior del departam'to de fecha de Marzo de 1837. Dios y libertad.

Monterey, 11 de Marzo de 1839.

MANUEL JIMENO.

Senor prefecto del primer distrito, D'n JOSE CASTRO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the 2
158 preceding and hereunto annexed pages of tracing paper, numbered from one to 2, inclusive, exhibit a true, full, and correct copy of an original of the secretary of state to the prefect of the 1st district as the same appears among said archives.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, the 19th day of Aug., 1861.

[SEAL.]

E. F. BEALE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS, *Keeper of Archives.*

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

Stipulation of counsel.

U. S. district court, northern district California.

THE UNITED STATES
vs.
ABEL STEARNS, appellant.

The undersigned, counsel for appellant in the above-entitled case,
159 admits that the translation filed herewith of Exhibits A, B, C, D, E, F, G, H, I, are correct translations of the papers to which they relate, respectively, with the exception of Exhibit A, partly untranslated.

The undersigned also admits that Exhibit H to be annexed to deposition of J. M. Covarrubias, and also Exhibits G and H herewith filed have been exhibited to him before filing.

San Francisco, Nov. 10, 1861.

SIDNEY L. JOHNSON, *Attorney of Claimant.*

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

Translation of part of Ex. "A."—Order of com'te g'ral, or treasurer, and receipt

Comandancia general to D'n Ygnacio Esquer and Don Benito Diaz, who go to that part: Your senoria will please deliver all the goods that may be on hand in the treasurer's office under your charge; that they may convey the same to this point, in accordance with the orders that they carry from this comandancia g'ral.

These gentlemen are authorized to exchange goods for money, doing this at the least possible loss, of which I advise you, that on your part
160 you may do the same, with the understanding that the person shall be preferred who may offer the most.

God and liberty. Headquarters Santa Clara, July 2d, 1846.

JOSE CASTRO.

Receipt.

Received of the departmental treasurer the sum of $1,914 50 in goods, (efectos,) to be conveyed to the headquarters.

Monterey, July 6th, 1846.

BENITO DIAZ.

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

Translation of Ex. B.—Grant.

Pio Pico, constitutional governor of the department of California:

Whereas Don Jose Andrade, a Mexican, has petitioned, for his perso-
[SEAL.] nal benefit, a tract of land six hundred varas square, situated in front of the mission of San Francisco de Asis, embracing from the orchard (huerta) to a point beyond (hasta pasada) the tannery, (curtiduria,) the necessary proceedings having been previously had, by virtue of
161 the authority vested in me by the supreme government, in the name of the Mexican nation, I have determined by decree of this day to concede to him the said land, declaring it to be his property, by virtue of these presents, in accordance with the law of the 18th of August, 1824, and the regulations of the 21st of November, 1828, subject to the approval of the most excellent departmental assembly, and under the following conditions:

1st. He may enclose it without prejudice to the crossings, roads, and servitudes. He shall enjoy it freely and exclusively, devoting it to the use and cultivation which may be most convenient.

2d. He shall solicit from the proper judge the juridical possession by virtue of this title, (despacho,) by whom the boundaries will be marked out with the proper landmarks.

3d. The land of which donation is made, six hundred varas square, and is

that which used to be occupied by the mission of San Francisco as an orchard and by a tannery. The judge who may give the possession will cause the same to be measured in accordance with the ordinance and in view of the diseno which the interested party will present.

162 In consequence whereof, I order that the present title being held as firm and valid, registry be made of it in the corresponding book, and that it be delivered to the interested party for his security and further ends.

Given in the city of Los Angeles, on common paper, there being no sealed paper, on the sixth of May, one thousand eight hundred and forty-six.

PIO PICO.
JOSE MATIAS MORENO,
Sec'y ad interim.

This superior title remains registered in the respective book.

MORENO.

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

Lranslation of Ex. C.

[Extract from juridical possession of rancho of Corralitos.]

MONTEREY, *June 10th*, 1846.

The present petition being presented and admitted in due form of law, let the corresponding notices issue to the senores colendantes, requiring them to appear on Friday, the eighteenth instant, on the rancho referred to, in order to proceed with the giving of the juridical possession as asked.

163 This I, Ygnacio Esquer, regidor decano of the illustrious ayuntamiento and first alcalde in turn of this municipality, exercising the functions of judge of first instance, provided, and signed with the assisting witnesses with whom I act ex officio for the absolute want of a notary public.

YG'O ESQUER.

A.: AMBROCIO GOMEZ.
A.: BENITO DIAZ.

On the 12th day of the same month and year, the citizen Manuel Jimeno, a colindante of the rancho of Los Corralitos being in this port, the proper notice was issued to him, citing him to appear on the day indicated.

In witness whereof, I make an entry of the same, and sign with the assisting witnesses.

YG'O ESQUER.

A.: AMBROCIO GOMEZ.
A.: BENITO DIAZ.

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

164 *Translation of Ex. D., Montesdeoca Doc.*

MINISTRY OF JUSTICE AND PUBLIC INSTRUCTION.

EXCELLENT SIR: It has reached the notice of his excellency the president that the government of that department has ordered to be sold, at public sale, all the property (lienes) pertaining to the missions of said department, which missions the predecessor of your excellency had ordered to be retained to the respective missionaries, for the management and administration of their temporal affairs. In consequence whereof, he has been pleased

to direct me to require your government to report in relation to those matters. Suspending at once all proceedings in relation to the alienation of the property (lienes) referred to, until the resolution of the supreme government.

I have the honor to say this to your excellency for the ends indicated, protesting my consideration and regard.

God and liberty. Mexico, Nov. 14th, 1845.

MONTESDEOCA.

To his excellency the gov'r of the dep't of California, port of Monterey.

165 Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

Translation of Ex. E.

[Extract from journals of departmental assembly of 15th of April, 1846.]

"Report was also made of an official communication from the minister of relations, dated on the 14th of November last, directed to the departmental government, in which, by superior order, a report is asked in relation to what had been determined with respect to the missions; that it was known that there had been exposed to public auction the property (lienes) of the same, which had been delivered to the fathers for the management of their temporalities, and in the mean time until such report is made suspending all proceedings in relation to the sale of the property aforesaid.

Resolved by the assembly, that this note being direct to the governor of the department, the same will be returned to him, in order that he may express his opinion in relation thereto, and that then the matter can be acted upon."

166 [Extract from record of session of dep't assembly for May 13th, 1846.]

The minutes of yesterday being approved, report was made of a communication from the governor, in which there is inserted a supreme order, which was directed to him, requiring a report in relation to the condition of the missions, and suspending in the meanwhile whatever action might have been taken in relation to said missions, the substance of which note from the governor, is to consult as to what should be done, with the understanding that, for his part, he is of opinion that the best course will be to carry out the plan pursued up to the present time, in order to avoid the total and irreparable ruin of the establishments. However, the corporation will say (what is best.) Ordered to be referred to the committee on missions.

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

167 *Translation of Ex. F.*

1846.

Six hundred varas square in the mission of San Francisco, conceded of Jose Andrade. No. 552.

Petition.

[SEAL.] Most excellent s'or:

Jose Andrade, a Mexican by birth, and a resident of this department, before your excellency in due form of law, represents that there being a piece of land in the ex-mission of San Francisco, in front of the establishment, where the orchard used to be, (the trees of which no longer exist,) which land may have an extent of six hundred varas, as far as the tannery, (curtiduria,) and does not pertain to the property of any individual or corporation whatever.

Wherefore, he prays your excellency to be pleased to concede the same to him in property, providing as prayed for in the foregoing petition, in which he will receive favor and justice, swearing that which is necessary, &c.

Angeles, May 4th, 1846.

JOSE ANDRADE.

168 *Marginal decree.*

ANGELES, *May 5th*, 1846.

Let the respective title be issued by the secretary of state to the interested party.

PICO.

Decree of concession.

ANGELES, *May 5th*, 1846.

In view of the foregoing petition, with the other matters necessary to be considered, by virtue of the authority vested in me by the supreme government of the Mexican nation, I have determined, by these presents to declare, as I do declare, the Senor Jose Andrade owner in property of a tract of six hundred varas of cultivable land, in the ex-mission of San Francisco, lying in front of the establishment of the same; which cultivated land is the same on which heretofore existed an orchard of fruit trees, and which extends as far as the tannery (curtiduria.)

Wherefore, let the respective title issue to the petitioner, which may secure to him the property, and let the espediente be reserved for the approbation of the most excellent departmental assembly.

Pio Pico, governor constitutional of the department of the Californias, thus ordered, decreed, and signed, which I attest.

169 PIO PICO.

JOSE MATIAS MORENO, *Sec'y ad interim.*

Copy of grant.

Pio Pico, constitutional governor of the department of the Californias:

Whereas Don Jose Andrade, a Mexican, has petitioned, for his personal benefit, a tract of land six hundred varas square, situated in front of the mission of San Francisco de Asis, embracing from the orchard as far as beyond the tannery, (curtiduria,) the necessary proceedings having been previously had, by virtue of the authority vested in me by the supreme government in the name of the Mexican nation, I have determined, by decree of this day, to concede to him the said land, declaring it to be his property by virtue of these presents, in accordance with the law of the 18th of August, 1824, and the regulations of the 21st November, 1828, subject to the approval of the most excellent departmental assembly, and under the following conditions.

First. He may inclose it without prejudice to the crossings, roads and servitudes. He shall enjoy it freely and exclusively, devoting it to

170 the use or cultivation which may be most convenient.

Second. He will solicit the respective judge to give him juridical possession by virtue of this title, by whom the boundaries shall be marked out with the proper landmarks.

Third. The land of which donation is made is of the extent of six hundred varas square, and is the same which has heretofore been occupied by the mission of San Francisco as an orchard, which extended as far as the tannery (curtiduria.) The judge who may give the possession will cause

the same to be measured in accordance with the ordinance, in view of the diseno, which will be presented by the interested party.

In consequence whereof, I order that the present title being held as firm and valid, registry be made thereof in the corresponding book, and that it be delivered to the interested party for his security and further ends.

Given in the city of Los Angeles on common paper, for the want of that which is sealed, on the 6th of May, 1846.

PIO PICO.

JOSE MATIAS MORENO, *Sec'y ad interim.*

171 Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

Translation of Ex. H.

Bando of Gov. Pico, requiring petitions for land to be made to prefects.

Pio Pico, vocal decano of the departmental assembly, and provisional governor of the Californias, to the inhabitants thereof:

Know ye, that in order that the public business of the department may be translated with the most prompt dispatch, I have determined to order as follows:

All those who may make petitions in relation to lands, or other matters, the resolution of which depends upon the departmental government, will direct them in the district of Monterey to the senor prefect, and in the district of Los Angeles to the respective sub-prefects, who will report upon the same, and forward said petitions to the secretary of state.

And that this may reach the notice of all, I order the same to be published and circulated, and that the same be duly observed.

172 Given in the city of Los Angeles on the 8th of January, 1846.

PIO PICO.

JOSE MA. COVARRUBIAS, *Sec'y.*

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

Ex. I, referred to in stipulation of Nov. 10, 1861.

[SEAL.] El E. S. gobernador de este departamento en uso de sus facultades constitucionales ha tenido a bien nombrar provicionalmente sub-prefecto de este capital y su partido al ciudadano Abel Stearns. En consecuencia debera prestar a la mayor brevedad ante ese Y. ayuntamiento el juramiento de ley, y se le guardaran todos les consideraciones debidas a su caracter. Degolo a V. S. de superior resolucion con los fines indicados, protestandole a la vez mi atencion muy destinguida.

Dios y libertad. Angeles, a 17 de Junio de 1846.

JOSE MATIAS MORENO, *S'rio.*

Muy Y. Ayuntam'to de este capital E.

173 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the preceding and hereunto annexed page of paper, numbered from one to , inclusive, ex-

hibit a true, full, and correct copy of an original document taken from book of departmental state papers, Angeles official correspondence, (vol. XIV, page 893,) as the same appears among said archives.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 16th day of Oct., 1861.

[SEAL.]

E. F. BEALE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS, *Keeper of Archives.*

174 Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

Translation of Ex. I.

Appointment of Abel Stearns, sub-prefect.

His excellency the governor of this department, in the exercise of his constitutional authority, has seen proper to appoint the citizen, Abel Stearns, provisionally, sub-prefect of this capital, and its partido, in consequence whereof, he will as soon as possible, before that ayuntamiento, take the oath as required by law, and he will receive all the consideration due to his official character.

And I inform your senoria of the superior resolution, for the ends indicated, protesting at the same time the assurances of my regard. God and liberty.

Angeles, 17th June, 1846.

JOSE MATIAS MORENO.

To the ayuntamiento of Los Angeles.

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

175 *Ex. G, referred to in stipulation of Nov.* 10, 1861.

SECRETARIA DEL GOB'NO DEPARTAM'L.

El ex'mo s'or gobernador me mandor habiso a V. S. que con esta fecha se espidiran, a las autoridades subalternas del distrito del cargo de V. S. ejemplares, que se refieren uno de ellos, a la division del departamento en distritos, segun el acuerdo de la ex'ma junta, y otras a que las instancias, sobre terrenos y otras de esta clase se dirijan a la prefectura que corresponda, comunicandoles, por separado, y en la misma f'ha a las referidas autoridades subalternas que en lo sucesivo se entiendan directam le por las oficinas que habla el decreto que arreglo lo interior del departamento de fecha de Marzo de 1837. Dios y libertad.

Monterey, 11 de Marzo de 1839.

MANUEL JIMENO.

Senor prefecto del primer distrito D'N JOSE CASTRO.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and cus-
176 tody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the preceding and hereunto annexed page of paper, numbered from one

to , inclusive, exhibit a true, full, and correct copy of an original document taken from book of departmental state papers, Monterey, vol. 5, page 13, as the same appears among said archives.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 16th day of Oct., 1861.

[SEAL.]

E. F. BEALE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS, *Keeper of Archives.*

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

177 *Translation of Exhibit G.*

OFFICE OF THE SECRETARY OF THE DEPARTMENTAL GOVERNMENT,
March 11, 1839.

Let it be recorded, his excellency the governor bids me inform you that under this date copies were issued to the subaltern authorities of the district in charge of your senoria, which copies refer, one of them to the division of the department into districts, according to the resolution of the most excellent junta, and the others to the directing to the proper prefecture of petitions for lands and others of that class; separate communication being made to the said subaltern authorities to the effect that in future they may correspond directly through the offices mentioned in the decree regulating the interior of the department. Dated March, 1837. God and liberty.

Monterey, March 11, 1839.

(Signed) MANUEL JIMENO.

To the prefect of the first district, DON JOSE CASTRO.

Endorsed: Filed Nov. 9, 1861.

W. H. CHEVERS, *Clerk.*

178 *Deposition of George Black, on part of U. States.*

In the district court of the United States for the northern district of California.

THE UNITED STATES } vs. ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 24 day of April, A. D. 1862, at San Francisco, in the district aforesaid, before me, Blair Laurie, a commissioner duly appointed by the district court of the United States for the northern district of California to take depositions of witnesses in behalf of the United States in land cases pending in said court, personally appeared George Black, a witness produced in behalf of the United States in the above-entitled cause now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: E. Lies and U. S. att'y for U. S.; S. Johnson, esq., for claimant.

Questions in behalf of the United States.

179 Question 1st. What is your name, age, residence, and occupation?

Ans. George Black; 38 years; San Francisco; civil engineer.

Question 2d. Look at Exhibit , now offered in evidence, and state what it is.

Ans. It is a map made by me in April, 1861. The streets and blocks are taken from the official map of the city of San Francisco. The buildings, fences, roads, and tannery are marked thereon, from actual survey. The three large squares of 600 varas square are drawn in accordance with the papers in the archives in case No. 94, presented to the land commission. The part colored yellow is church property, patented to Archbishop Alemany, No. 609, before land commission. The lines were obtained by me from the official survey in the surveyor gen'l's office. The lot marked "Guerrero," No. 229, before land commission; the next marked de Haro, No. 705, before land commission, and that marked Ridley, 670, before land commission, are
180 placed upon that map from information obtained from the surveyor general's office. The Valencia grant, No. 33 and 34, before land commission, were obtained from same source; likewise the lot of 400 varas square, marked Andres Pico, from case No. 612, land commission. The broad red line at the southwest of the exhibit represents the boundary of the San Miguel patent.

Ques. 3d. Look at descriptions of this tract in "Exhibit B," filed in this case, and in that part of "Exhibit F" purporting to be the petition of original grantee, and state with reference to the map made by you, and just offered in evidence, in what respect, if any, they differ.

Ans. The petition calls for 600 varas square from the tannery, passing by the mission wall, 600 varas marked red on my map, and the grant calls for 600 varas from the garden of the mission to and beyond the tannery. The two squares, one marked yellow, the other dotted blue, are intended to meet the description in the grant.

Ques. 4th. Could any other squares of 600 varas, besides the three
181 just mentioned, be laid off in conformity with the calls of the petition or grant?

Ans. A variety of others could be laid off, as those three that I surveyed passed through the northeast corner of the tannery. One of the squares starts for the southwest corner of the adobe of the mission orchard, and the other starts from the northwest corner of the same.

(Deposition and exhibit objected to by counsel for claimant, on the ground that the witness did not act in any official capacity in making the survey and exhibit, and because the information referred to is not in evidence in the case, and the statements of the witness, respecting the same, are hearsay and incompetent.)

(The counsel for U. States consents that the foregoing objection shall have the same effect as if each question and answer had been excepted to.)

GEO. BLACK.

Subscribed and sworn to before me, 24 April, 1862.

BLAIR LAURIE, *U. S. Spec'l Comm'r.*

Endorsed: Filed April 24, 1862.

W. H. CHEVERS, *Clerk.*

(Here follows map, page 182.)

183 *Deposition of Salvador Vallejo on part of the United States.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 30th day of January, A. D. 1862, at the

city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Salvador Vallejo, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by counsel by consent.

Present: Eugene Lies, esq., for the United States, and Sidney L.
184 Johnson, esq., for claimant.

Questions in behalf of the United States.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Salvador Vallejo; my age is 47 years; I reside in Napa, in this State.

Ques. 2d. Where did you reside in 1846?

Ans. In Napa.

Ques. 3d. Did you, in the beginning of that year, visit Yerba Buena, and were you acquainted with its neighborhood, especially with the Mission Dolores?

Ans. Yes, sir.

Ques. 4th. I now call your attention to a tract of land in front of the principal edifice of said mission, extending towards the estuary or bay. State what was the condition of said tract in the beginning of 1846 as to improvements and occupation. Limit your answer to a tract extending six
185 hundred yards from the old tannery towards San Francisco, and six hundred varas in the other direction.

Ans. In front of the principal edifice there was the house of Candelario Valencia. There was a garden and fences in connection with Valencia's house, and between that and the tannery. Towards the left, as you look towards the estuary, were the houses of Guerrero, De Haro, Francisco Sanchez, and Charley Brown. On the lot of Valencia there were two houses, in one of which Mrs. Valencia lives to this day. These people had then lived there for several years. There are still some of the same fruit trees that were there in 1846. The houses of Brown, Guerrero, Sanchez, and De Haro are also still standing there. There was also in 1846 the house of Jose or Chino Sanchez, which is still standing.

Cross-examination waived.

SALVADOR VALLEJO.

Subscribed and sworn to this 30th day of January, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Comm'r.*

186 Endorsed: Filed April 26th, 1862.

W. H. CHEVERS, *Clerk.*

Deposition of Pablo de la Guerra, on the part of the United States.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 30th day of January, A. D. 1862, at the

city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Pablo de la Guerra, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the
187 State of California, who, being duly sworn, testified as follows, this deposition being taken by consent.

Present: Eugene Lies, esq., counsel for the U. S., and Sidney L. Johnson, esq, for claimant.

Questions in behalf of the United States.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Pablo de la Guerra; my age is 42 years; and I reside in Santa Barbara.

Ques. 2d. Where were you in the beginning of 1846, and what was then your office or occupation?

Ans. I was in California, and my office was collector of the custom-house in Monterey. I resided in Monterey.

Ques. 3d. Did you know one Benito Diaz?

Ans. I did.

Ques. 4th. Did he then hold any office? If so, what and where?

188 Ans. He was "guarda de la aduana." I used to move him frequently from San Francisco to Monterey. He was one of my subordinates appointed by me, and his business was to prevent smuggling. He was more properly "celador."

Ques. 5th. Could he move from place to place in California without your permission?

(Objected to as leading. Question withdrawn.)

Ques. 6th. Did said Benito Diaz, during the year 1846, resign his said subordinate appointment?

Ans. The occupation of California by the Americans in that year made all the officers resign. I have been refreshing my memory, and although my impression is that Benito Diaz was in the custom-house at that time, yet I am not very positive, as in the beginning of 1846 some changes took place in the custom-house.

Ques. 7th. Did you know Jose Andrade? If so, where and under
189 what circumstances.

Ans. I did. I knew him in San Blas in 1829, when he was a sailor in a vessel belonging to my father. He came to California in the same year in that vessel, and remained in the service of my father as a general house servant up to perhaps 1843 or 1844, and then he moved. I saw him afterwards in Monterey. He moved about the State here.

Ques. 8th. Did you leave the city of Monterey during or about the month of May, 1846? If so, where did you go? And state as nearly as you can the date of your departure, your arrival at any other place, and your return to Monterey.

Ans. I left Monterey in the early part of May or latter part of April, 1846. About the 1st or 2nd of May, I think, but I am not positive, I went to Los Angeles. I must have arrived at Los Angeles about the 7th or 8th of May.
I remained there about five or six days; stopped at Santa Barbara three
190 days, and must have returned to Monterey somewhere about the 20th or 22d. I travelled by land both ways.

Ques. 9th. Who was left in charge of the custom-house at Monterey when you left at that time?

Ans. Don Guillermo Hartnell.

Ques. 10th. Where was Benito Diaz at that time?

Ans. I don't remember; but if he was an officer of the custom-house he must have been in Monterey.

Ques. 11th. Where at the same time was Jose Andrade?

Ans. I do not know.

Ques. 12th. Do you recollect seeing Jose Andrade or Benito Diaz at Los Angeles during your stay there above referred to?

Ans. No, sir.

Ques. 13th. Did you know Vicente Gomez, and what was his residence and occupation in 1846?

Ans. I knew him, but I did not know what his occupation was in
191 1846. I saw him around Monterey, and suppose that to be his residence.

Ques. 14th. Do you recollect seeing said Gomez in Los Angeles during your stay above referred to?

Ans. No, sir. My stay in Los Angeles being short, and my business being of great magnitude, my attention was wholly absorbed by it, and I did not pay much attention to anything but my business. He, Jose Andrade and Benito Diaz might have been there without my seeing them or recollecting it if I had. My impression is that Benito Diaz was in Monterey, but I cannot swear to it.

Cross-examination waived.

PABLO DE LA GUERRA.

Subscribed and sworn to this 30th day of January, A. D. 1862, before me.
W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed April 26th, 1862.

W. H. CHEVERS, *Clerk.*

192 *Deposition of R. C. Hopkins, on part of the United States.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 30th day of January, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being taken by consent.

Present: Eugene Lies, esq., for the U. S., and Sidney L. Johnson,
193 esq., for claimant.

Questions in behalf of the United States.

Question 1st. Are you the same R. C. Hopkins who has been heretofore examined in this case?

Ans. I am.

Ques. 2d. Look at the original of "Exhibit F," attached to your former deposition in this case, and state what it is.

Ans. It is the original expediente hitherto referred to by me in a former deposition.

Ques. 3d. Look at page 5 of said expediente, being the borrador of the grant in this case. Direct your attention to an interlineation of two lines and a half, being the first one that occurs on said page. State, if you know, in whose handwriting are the words effaced and interlined.

Ans. The words effaced are in the handwriting of Matias Mo-
194 reno, secretary of state of the former Mexican government, and the words interlined are, I think, in the handwriting of Benito Diaz.

Ques. 4th. Look at the original of Exhibit B. State what it is, and state if you compared the handwriting of said original with that of the interlineation above referred to. State the result of such comparison.

Ans. The original of Exhibit B is the original grant in this case. I have compared the handwriting of said original grant with the handwriting of the interlineation referred to, and particularly with the corresponding words, and I feel convinced that they are written by the same person.

Ques. 5th. Look at the book now shown you and state, if you know, whence it comes and what it is.

Ans. It is volume 4 of Legislative Records, containing the journals, reports, &c., of the departmental assembly from the year 1841 to 1846,
195 inclusive. It is from the Spanish archives in the office of the U. S. surveyor general, which archives are under my charge.

Cross-examination waived.

R. C. HOPKINS.

Subscribed and sworn to this 30th day of January, A. D. 1862, before me.
W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed April 26th, 1862.

W. H. CHEVERS, *Clerk.*

Deposition of J. D. Stevenson, on part of United States.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ABEL STEARNS. } In land cases.—Dis't court No. 262; land com. No. 94.

Be it remembered, that on this 2d day of May, A. D. 1862, at May, in the district aforesaid, before me, Blair Laurie, a commissioner duly appointed by the district court of the United States for the northern district of California to take depositions of witnesses in behalf of the United States in
196 land cases pending in said court, personally appeared J. D. Stevenson, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: Eugene Lies, esq., for U. S., U. S. att'y for U. S.; S. Johnson, esq., for claim't.

Questions in behalf of the United States.

Question 1st. What is your name, age, residence, and occupation?

Ans. Jonathan D. Stevens; 62 years; San Francisco; att'y-at-law.

Ques. 2d. Look at Exhibit L, now offered in evidence, and state what it purports to be.

Ans. It purports to be a copy (certified by the U. S. sur. gen'l of Cal'a) of a communication addressed by me as the col. commanding the southern military district of Cal'a, addressed to Lieut. H. W. Halleck, lieutenant
197 of engineers, and sec'y of state for Territory of California, dated at my headquarters, ciudad de los Angeles, 7 Sept., 1847, and a memorandum attached to it, forming a part of and referred to in the communication.

Ques. 3d. Where were you at and for some time before its date of Sept. 7, 1847?

Ans. At Los Angeles; I arrived there in the month of May, believe the 10 and 15, 1847, when I assumed command of the southern military district, making Los Angeles my headquarters.

Ques. 4th. Have you lately seen the original of said exhibit? If so, how long since, and where?

Ans. I saw the original of it yesterday, in the office of the surveyor general of U. S., bearing my genuine signature.

Ques. 5th. State, if you remember, the names of the individuals who conveyed to you the information which, in such communication, you stated that you had received in relation to fraudulent land grants.

Ans. There were a number of persons, parties referred to in my
198 communication, Abel Stearns, Bell, Wilson, and others.

Ques. 6th. State, if you remember, what information in regard to fraudulent land grants was furnished to you, by Abel Stearns in particular.

Ans. Fraudulent grants made by him and purporting to have been made by him was a subject of conversation and of written communication between Gen'l Kearny, who was the military and civil governor of the Territory, Col. Mason, his successor, and myself, at Monterey and at Los Angeles, where he (Kearny) went to place me in command, and I was by Kearny specially instructed to make careful inquiries into all and every circumstance connected with the making of grants of land in Cal'a, and to communicate such information as I might obtain from time to time at the department headquarters at Monterey. As soon after I got my district in order I began to make inquiries as to who were the civil officers under Pico, and learned from
A. Stearns and others that he (Stearns) was either the prefect, sub-
199 prefect, and an intimate and confidential friend of Pico; and from him, and others to whom I have referred to in said communication, and others I learned that grants were made after it was known that the Americans had taken possession of Cal'a, which were antidated, and especially those made in this section of country from San Jose this way, and that a very large portion of them were signed by Pico on the day and night preceding his start for Mexico, which was about the 8 or 9 August, 1846; Stearns told me that he was present on the day and night referred, especially the night those grants were executed, and that Pico left him (Stearns) in charge as next officer in command. These grants were frequently the subject of conversation; and on one occasion a party, to whom a valuable grant was made, confessed to me that the grant was executed that night, and he knew nothing of it until he was sent for to accept the grant. I avail'd myself of every opportunity to obtain information about these grants, both by conversation and otherwise.

(The exhibit, questions, and answers in the foregoing were
200 objected to when propounded, made, and produced in due time by counsel for claimant, on the ground that they are hearsay and not the best evidence, and therefore incompetent evidence of any fact, except that the witness got such information in the way stated, and wrote the original letter of which the exhibit is a copy.)

(By consent of att'y for U. S. this objection is made *nunc pro tunc.*)

Ques. 7th. Did you get information from Abel Stearns in regard to fraudulent land grants other than that alluded to in Exhibit L?

Ans. I got more information from Abel Stearns relative to fraudulent land grants than from all other persons in California and other than those referred to in that communication, but which I do not now recollect. When I speak of fraudulent grants I refer to grants made after the Americans took possession of the country and that were antedated.

J. D. STEVENSON.

Subscribed and sworn to before me this 2 May, 1862.

201 BLAIR LAURIE, *Sp'l U. S. Comm'r.*

Endorsed: Filed May 2d, 1862.

W. H. CHEVERS, *Clerk.*

203 *Exhibit L, attached to dep. of J. D. Stevenson.*

H'DQ'T'S S. M. DIS'T CALI.,
Ciudad de los Angeles, Sept. 7th, 1847.

SIR: The enclosed is all the information I can give in answer to the enquiries contained in your letter of the 23d August last, except that it is perfectly well understood, and can be proved, I am informed, that Gov. Pico left here not later than the 17th of June and did not return for at least four weeks, and that the deeds alluded to in the within were all signed the night before Pico left the pueblo, and when the United States was in possession of California and Com'd'rs Stockton's forces between here and San Pedro, and were all antidated, which of course renders them void; besides, the proper forms were never complied with, and no department assembly has ever set since to confirm the grants. Com'd'r Stockton received a large quantity of the public records from this place, and I would suggest the propriety of an enquiry on board the U. S. ship Congress, where it is possible they may be at this time. If claims are made to lands granted under such circum-

204 stances, if the government has power to order an examination in the title, and will direct the inquiry to be made with sufficient authority to compel witnesses to appear, the facts herein stated can all be proved, and I have no doubt much more at this time, but in a few months or a year it might be difficult, if not impossible, to obtain sufficient proof to prevent the fraud which is attempted. It is said here by many well-informed persons that some law of the assembly of the Territory, or a decree from Mexico, or an old law of the Indians, still in force, prohibited the granting of lands nearer than 500 varas to the water. If this be so, the evidence of it can only be found among the documents given to Com'd. Stockton, unless it be known by Gen'l Vallejo or Gov. Alvarado.

I have the honor to be, very respectfully, your obd't serv't,

J. D. STEVENSON,
Col., Com'd S. M. Dist.

L't W. HALLECK,
L't of Eng. and Sec'y of State for the Territory of California.

205 Query 1. Cannot answer; but from the best oral information, think there is no such prohibition.

2. An exceptional decree said to exist respecting California. Date propably 1830, more or less.

3 & 4. Vide "La ley de colonizacion," 18 August, 1824, of the Mexican Congress, edit 1829; and the "Reglamento" of 1828, defining the manner of granting vacant lands, both of which must exist in the archives of Monterey,

translation of portion of a deed for land granted according to said law and regulations, date 1840, conceding to him said land, declaring it his property by these letters present, he subjecting himself to the following conditions and to the approbation or disapprobation of the hon. junta departamental:

ART. 1. He can enclose it without prejudice to the crossings, roads, and (servidumbres,) obligations; shall enjoy it freely and exclusively, puting it to the use or cultivation most suitable thereto, but within one year he shall build a house and it shall be inhabited.

206 ART. 2. He shall solicit the proper justice to give him judicial possession in virtue of this decree, which justice shall define the limits in which limits, besides the landmarks, he shall set out some fruit or useful forest tree.

ART. 3. The land referred to (asked for) being of —— extent, more or less, according to the plan accompanying said petition, the justice who may give possession shall cause it to be measured according to regulations, the overplus, if any, remaining to the nation for such uses as may seem fit.

ART. 4. In case he should violate any of the foregoing conditions, he shall lose his right to said land and it may be denounced by any other.

Query 5. No such special instructions known of. If any, they can be found in the archives. Gen'l Vallejo or Gov. Alvarado, most likely throw some light on the subject.

207 6. From the testimony of divers residents in this pueblo, Ex. Gov. Pio Pico left here June 18, 1846, and did not return till or about July 21, 1846. References, Manuel Rigueroa, A. Stearns, A. Bell, and Ignacio Valle.

It is a matter of common notoriety here that grants of land were made by Pio Pico, to the following individuals, Pluny F. Temple, W. Workman, Antonio Coota, R. Den Bery Wilson, H. Reid, and others, the deeds being made out and signed on or about Aug. 9, 1846. Reference, A. Bell. Two large boxes, said to contain the archives of the asamblea departamental during its sessions in this place, were delivered by Don Louis Vigne, of this place, to the order of Com. Stockton in August last, supposed to have been put on board the Congress.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody
208 a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the five preceding and hereunto annexed pages of tracing paper, numbered from one to five, inclusive, exhibit a true, full, and correct copy of a letter from G. D. Stevenson to H. W. Halleck, dated Sept. 7th, 1847, together with queries respecting grants made by Gov. Pio Pico, as the same is found among said archives.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 14 day of April, 1862.

[SEAL.]

E. F. BEALE,
U. S. Surveyor General for California.

Endorsed: Filed May 2d, 1862.

W. H. CHEVERS, *Clerk.*

209 *Dep. of Juan N. Padilla, on part of U. S.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 5th day of May, A. D. 1862, at San Francisco, in the district aforesaid, before me, Blair Laurie, a commissioner duly appointed by the district court of the United States for the northern district of California to take depositions of witnesses in behalf of the United States in land cases pending in said court, personally appeared Juan N. Padilla, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: Eugene Lies, esq., for U. S., U. S. attorney; S. Johnson, esq., for claimant.

210 *Questions in behalf of the United States.*

Question 1st. What is your name, age, residence, and occupation?

Ans. Juan Nepomuceno Padilla; 41 years; Mazatlan, Mexico; merchant.

2. Where were you in the beginning of 1846?

Ans. In the neighborhood of Sonoma, on my ranch.

3. About what time and under what circumstances did you leave Sonoma, in that year?

Ans. In consequence of the taking of Sonoma by Fremont, as I believe. I went to Contra Costa a few days afterwards.

4. How long did you remain in Contra Costa, and what did you do there?

Ans. I joined the forces of Gen'l Castro, and went to Santa Clara 2 or 3 days after reaching the camp in a ranch opposite this city, which I
211 think was the ranch San Lorenzo.

5. How long had you inhabited California previously to the occurrences above related?

Ans. I had lived here since 1836.

6. Did you know Jose Andrade?

Ans. I saw him once in Monterey when I went there from here, and afterwards with the forces of Gen'l Castro.

7. Was he with the forces of Gen'l Castro at Santa Clara at the time you went there, as you stated above?

Ans. He was.

8. How long did you and Jose Andrade remain with the forces of Gen'l Castro, and where did you go?

Ans. From this place of Contra Costa Andrade Castro and I went together, passing through Los Angeles, to the department of Sonora.

9. How long did you, Castro, and Andrade remain in Los Angeles,
212 and about what time of the year?

Ans. We staid in Los Angeles, I think, more or less, one month. I do not remember the month.

10. During this stay at Los Angeles, did you have any conversation with Jose Andrade in regard to his obtaining a grant of land? If so, state its purport.

Ans. Once in the government house, being alone together, Andrade showed me some papers whose purport I do not exactly recollect; it was something like

borrador; and he said that he was arranging with the governor to make him a grant for the tract referred to in those papers. Quite late that day he came for me and took me to the governor's house, saying that the governor wanted to enquire of me (as I had been alcalde here) whether the land did not belong to somebody here. The secretary of the government showed me the papers, and by the diseno that he had I stated that I did not know it belonged to anybody. I had not granted it to any while I was
213 alcalde.

11. Do you remember whereabouts the tract in question was situated?

Ans. It was a tract near the mission of Dolores, but I cannot state the number or the place.

12. On your way from Los Angeles to Sonora did you have any further conversation with Andrade concerning this grant?

Ans. Several times. He thanked me for my informe to the governor, and said he had done business about that title with Abel Stearns, and had received some money from Stearns on that account.

13. Was this the only time you were in Los Angeles during the year 1846?

Ans. It was.

14. You have stated that you do not recollect in what month of the year you were there. Do you recollect whether it was before or after the taking of Monterey by the Americans?

214 Ans. It was afterwards. I think it was in July.

Counsel for claimants objected to ques. 12 when propounded, and to the answer thereto when made, on the ground that the declarations of the grantee made after his deed of conveyance of the grant to the claimant, tending to impeach the grant, are incompetent and inadmissible, and by consent the objection is entered *nunc pro tunc*.

Cross-examination.

15. When did you first become acquainted with Jose Andrade?

Ans. I first saw him in 1842 or 1843, in Monterey, but formed no relations with him then.

16. What makes you recollect seeing him at that time?

Ans. Nothing in particular.

17. What was his business there at that time?

Ans. I don't know exactly. I had little acquaintance with him until we served together under Castro.

215 18. Did you never see him from that time until you met him in Contra Costa?

Ans. No.

19. You say that your first conversation with Andrade about his grant was when you were alone together in the government house at Los Angeles. How did it happen that you and Andrade were there alone together?

Ans. In the part of the house where we were we were alone. There may have been other officers of the government in other parts of the house.

20. Did you and he withdraw from the rest for the purpose of having a private conversation?

Ans. No; it was a matter that was spoken of to me where I happened to be seated.

21. What was your business there at that time?

Ans. I was there on business of my own; I was claiming money
216 due me by the government.

22. What seemed to be the motive of Andrade for speaking to you of his grant at this time?

Ans. He showed me a sort of diseno that he had of a tract at the Mission Dolores, and his object was to see if I would help him.

23. What was the description of the tract of land exhibited on this diseno? What was its shape, extent, situation with reference to the mission or any other object in the neighborhood?

Ans. I don't recollect any of these particulars. He said he was in treaty with Mr. Stearns for the sale of this tract of land, and he wanted to have for Mr. Stearns all possible information about it.

Adjourned by consent to one o'clock p. m. to-morrow.

APRIL 6TH, *one o'clock p. m.*

Examination of J. M. Padilla resumed.

Present: E. Lies, esq., for U. S.; U. S. att'y for U. S.; S. Johnson,
217 esq., for claim't.

Cross-ex'n continued.

Ques. 24. How long was it before your departure from Los Angeles for Sonora that this conversation with Andrade took place?

Ans. A few days.

25. Do you recollect what day or what month it was when you set out for Sonora?

Ans. Not exactly; I think it was some time in the early part of August.

26. About how many were you who then went together to Sonora?

Ans. About twenty.

27. What was the reason of your going?

Ans. The war with the U. States. Gen'l Castro so ordered it. I don't know any other reason.

28. Can't you state more precisely how long before your departure
218 for Sonora this conversation with Andrade took place?

Ans. It was about eight days, more or less. It is 16 years since then, and I had no interest in it and cannot recollect precisely.

29. How many conversations had you with Andrade on the subject of his grant before leaving Los Angeles for Sonora?

Ans. I recollect only two conversations, both on the same day.

30. Can you recollect what paper Andrade showed you at the first of these conversations?

Ans. I recollect of seeing a plan or diseno, or something of the kind. He had other papers relating to this tract of land, but what they were I do not recollect.

31. You have said, in your answer to ques. No. 10, that he had something like a borrador, and that he said that he was arranging with the governor to make him a grant for the tract referred to in those papers. Do you say the same thing now?

219 Ans. I do. I did not have the papers in my possession, and cannot, after this lapse of time, state more definitely.

32. In what conversation was it that Andrade spoke of being in treaty with Abel Stearns for the sale of this tract of land?

Ans. I don't recollect in which; perhaps it was in both.

33. Did you not say, yesterday, that it was in the first conversation?

Ans. I learned that he was in treaty with Mr. Stearns, but I cannot exactly remember in which conversation it occurred.

34. Whom did you meet at the government house when, as you say, Andrade took you there late in the evening?

Ans. I saw there Matias Moreno, secretary of the government.

35. Was he the only official whom you then met there?

220 Ans. I do not recollect any other.

36. You, Andrade, and Moreno were the only ones present, so far as you recollect?

Ans. The governor was there also. I did not consider the governor as comprehended in the term "official."

37. What then passed between you?

Ans. Some two questions were asked me by the secretary by order of the governor.

38. Were any papers shown you on that occasion? If so, what were they?

Ans. They had the same papers there on the table that Andrade had shown me on the same day.

39. How do you know they were the same papers?

Ans. I saw the papers there on the table. They put some questions to me touching the same tract of land. I did not read the papers, but

221 thought they were the same shown me on the same day.

40. Did you see the same diseno or plan which you say Andrade had previously shown you?

Ans. Yes; that was one of those on the table. For this reason I say they were the same papers.

41. Did you ever see, or talk with, the claimant, Abel Stearns, on the subject of that grant or that tract of land?

Ans. I did not on that occasion; I did long after.

(Ques. and answer objected to by counsel for U. S. as incompetent and irrelevant.)

42. Do you know whether Andrade had the *titulo* or *despacho* for that tract of land at the time when he first spoke to you on the subject?

Ans. I did not ask for any information on the subject. I simply answered the questions he put to me.

222 43. Had you any knowledge of the contents or character of any other paper than the diseno you have mentioned?

Ans. I knew nothing of any other paper except by what was said to me.

JUAN N. PADILLA.

Subscribed and sworn to before me this 6th of May, A. D. 1862.

BLAIR LAURIE, *Sp'l U. S. Comm'r.*

Endorsed: Filed May 6th, 1862.

W. H. CHEVERS, *Clerk.*

Deposition of Leonardo Cota, on part of claimant.

In the district court of the United States for the northern district of California.

THE UNITED STATES } In land cases.—Dist. court No. 262; land com. No. 94.
v.
ABEL STEARNS }

Be it remembered, that on this 16th day of July, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for

223 the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Leonardo Cota, a witness produced in be-

half of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by a sworn interpreter.

Present: Sidney L. Johnson, esq., for claimant; U. S. att'y and Eugene Lies, esq., for U. States.

Questions in behalf of the claimant.

Question 1st. What is your name, age, residence, and occupation?

Ans. Leonardo Cota; 44 years; Los Angeles; ranchero.

2. Where did you reside in 1846?

Ans. In Los Angeles.

224 3. Did you, at any time in 1846, hold any position in the pueblo of Los Angeles? If so, what was it?

Ans. I held the office of first regidor of the ayuntamiento.

4. Did you hold that office in the month of August, 1846?

Ans. I was 1st regidor, acting as alcalde in the absence of one of the alcaldes, for some months in the year 1846. I think it was from the month of May or June until the occupation of Los Angeles by the Americans.

5. Do you know the claimant in this case, Abel Stearns? If so, how long have you known him, and where has he resided since you have known him?

Ans. I have known him from about the year, as an acquaintance, 1838. I may have seen him before that. He has always been residing in Los Angeles since I have known him.

6. Did you ever know Jose Andrade? If so, when did you first know him and where?

225 Ans. I first knew him in Santa Barbara, some time between 1835 and 1840. I saw him repeatedly in Santa Barbara, and I saw him afterwards in Los Angeles and on the ranch of Pio Pico.

7. When you saw him in Santa Barbara where and with whom was he living and what was his occupation?

Ans. He was living in the house of Don Jose Noriega. I don't know what occupation he had there, as I was not frequently at that house.

8. When did you first see him in Los Angeles?

Ans. I don't recollect.

9. Did you see him at Los Angeles in 1846? And if so, at what time and on what occasion?

Ans. I saw him in July or August, 1846. He came to the alcalde's office, or office of the ayuntamiento, and gave me a document for the purpose of making a deed of sale or transfer. I had seen him several days before that in Los Angeles.

226 10. Was the deed of sale made? If so, to whom was it made?

Ans. It was made to the claimant, Abel Stearns.

11. Had you anything to do with the sale in your official capacity as acting alcalde?

Ans. Yes; I was applied to to authenticate the sale as alcalde, and did so.

12. Do you recollect what was the object of this deed of sale?

Ans. It was a tract of land here at the Mission Dolores.

13. Do you recollect what was the document which you say was handed to you by said Jose Andrade for the purpose of making said sale? If so, state what it was.

Ans. It was a grant of the land made to him by the governor, Pio Pico, embracing a tract at the Mission Dolores, as I said before.

227 14. Do you recollect on what paper the deed of sale you have mentioned, from said Jose Andrade to Abel Stearns, was written?

Ans. It was written on the grant itself.

15. Do you recollect anything about the appearance of said document when handed to you by said Andrade, or any other particulars respecting said sale than you have already mentioned?

Ans. I recollect that the clerk who was writing the deed of sale remarked that he "could not write well on that paper because it was dirty." I looked at it, and saw that it was soiled and worn, as if from handling and carrying in the pocket.

16. Look at the document marked "J. W. No. 1," annexed to the deposition of Pio Pico, taken before Comm'r James Wilson," filed in the office of the U. S. land commission Sept. 27, 1852, on the 4th or last page thereof, and say whether the signature of Leonardo Cota thereon is your genuine signature, and whether the signature of Jose Andrade and Ygnacio Coronel
228 and Manuel Enriquez are also the genuine signatures of those persons.

Ans. They are.

17. Who were the said Ygnacio Coronel and Manuel Enriques, and in what capacity did they sign said document?

Ans. Ygnacio Coronel was the secretary of the alcalde office, in which I was then acting as alcalde; Manuel Enriques was a person then in Los Angeles, who happened to be in the office, and they both signed the document as assisting witnesses, according to the custom in such cases.

18. Examine farther said document, and say whether that is the deed of sale from said Jose Andrade to Abel Stearns, of which you have before spoken.

Ans. It is the same document.

19. Examine the date it bears, and say whether it was executed at said date.

Ans. It is the true date within a day or two. The document might
229 have been handed in, and the deed commenced, and the date put without its being signed and concluded on the same day.

20. Examine the handwriting of the body of said deed of sale, and say whether you know where it is.

Ans. It is the handwriting of one Manuel Coronel, son of the said Ygnacio Coronel, secretary of the ayuntamiento.

Cross-examination.

21. What has become of Manuel Coronel, of whom you have just spoken?

Ans. He resides in Los Angeles. I understood he had gone to the Colorado mines, but I am not sure about it.

22. How old is he?

Ans. About 25 or 26.

23. Did you in the year 1846 leave Los Angeles under any commission from the departmental goverment?

230 Ans. I went to Monterey. There have been some kind of movement among the troops at Los Angeles to the effect of a refusal to acknowledge the authority of their commanding officer, Jose Antonio Carrillo, and I was sent by the governor as a commissioner, together with one Juan Sepulveda, for the purpose of informing the commandante general of the cause of the occurrence. I do not exactly remember the date. It probably was in 1845. It was before the pronunciamiento of Castro, before the engagement with Fremont, and before I was acting as alcalde. I think my companion was one of the alcaldes of the pueblo.

24. How long did you stay in Monterey on this occasion?

Ans. From 4 to 6 days, more or less. It was not in the rainy season.

25. Did you see Jose Andrade in Monterey on that occasion?
Ans. No.
26. What was the occupation of Jose Andrade in 1846?
231 Ans. I do not know.
27. What became of Jose Andrade after he signed the deed of sale?
Ans, I don't know what became of him. The last I remember of seeing him was at the ranch of Pio Pico, about 4 leagues from the pueblo of Los Angeles, about 4 or 5 years ago. He told me he was working on a house or chapel; I don't remember which.
28. After authenticating the deed of sale, when did you again see, for the first time, the paper upon which it was written?
Ans. I had not seen it again until I recently came to San Francisco. It was yesterday when I first saw it.
29. Had you any recollection of the dirty appearance of that paper before you saw it yesterday?
Ans. I remembered something about it, but not so exactly as when I saw it yesterday.
30. Who showed it to you yesterday?
232 Ans. The surveyor general, Mr. Stearns, with you.

LEONARDO COTA.

Sworn to and subscribed July 16, 1862, before me.

W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed 17th July, 1862.

W. H. CHEVERS, *Clerk.*

Deposition of Jose T. Serrano, on part of claimant.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 16th day of July, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending
233 in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Jose Sepulveda y Serrano, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: S. L. Johnson, esq., for claim't; E. Lies and U. S. dist. att'y for U. States.

Questions in behalf of the claimant.

Question 1st. What is your name, age, residence, and occupation?
Ans. Jose Sepulveda y Serrano; 58 years; Los Angeles; ranchero.
2. Have you always resided in Los Angeles?
Ans. I have.
3. Did you ever know one Jose Andrade? If so, where did you first know him?

Ans. I first knew him in the house of Don Jose de la Guerra and Noriega, in Santa Barbara.

234 4. Are you connected by blood or marriage with said Noriega, family?

Ans. Francisco, son of the last mentioned, is my brother-in-law.

5. What was said Jose Andrade doing in said Noriega family?

Ans. The house of Noriega was the one I always stopped at in Santa Barbara, and said Andrade was either doing carpenter's work there or going occasionally to a rancho of said family, called Tapo, for the purpose of making brandy out of the crop of grapes on said place.

6. Did you ever see said Jose Andrade in Los Angeles, and when did you first see him there?

Ans. Yes. I saw him at various times in Los Angeles. I can't recollect when was the first time. He stopped at my house when he was there.

7. Do you recollect having seen him there in 1846? If so, at what time or times?

Ans. I recollect that he was there in 1846 by the circumstance that he came to me and asked me for a horse to go north to take possession
235 of a grant of land he had there, and that I was then in treaty with Don Eulogio Celis for a sale of horses to Pio Pico. I think it was in the latter part of April or the beginning of May. I lent him a horse, and he went with it to Santa Barbara.

8. Did you see said Andrade at Los Angeles at any other time in the year 1846? If so, at what time?

Ans. Yes, afterwards. He returned to Los Angeles with the troops of Gen'l Castro.

9. On this second visit to Los Angeles with the troops of Gen'l Castro did he speak again to you of his tract of land? And if so, what took place between you on that subject?

(Objected to by U. S. as tending to elicit hearsay evidence, and counsel also objects to answer to ques. 7 on same ground.)

Ans. Yes; he wanted to sell the grant to me, and I asked him if he had taken possession of it in so short a time, and he told me he had not
236 been able to do so; that he had met some of Gen'l Castro's troops on the way and had returned with them.

10. Do you recollect anything about the tract of land, or where it was situated.

(Same objection as to question 9 and to answer 7.)

Ans. I never saw the land, but the document of title he wanted to sell me was for a tract of land here at the Mission Dolores. He wished to sell it to me, but I did not want to buy it.

11. Did he name any price for the land? If so, what was it?

Ans. Yes; he asked me $350 for it.

12. Did you learn from him whether he afterwards sold it, to whom he sold it, and for what price? If so, state.

(Objected to as incompetent, irrelevant, and leading.)

Ans. When he was proposing the sale to me I told him I did not want to buy it, because he had not taken possession of it, and that on that
237 account it might not be good; and he said: "Yes, it is good; here is Pio Pico's signature; he made it. I did not take possession of it because I met the troops of Gen'l Castro, and all was in revolution at the north." When I declined to buy it he said he would offer it to Don Abel Stearns; and I said it was well that he was an American. He afterwards told me that he had sold it to Don Abel Stearns. I asked him for how much. He answered for $100. I thereupon got angry with him, and said to him, You asked me $350 for it, and sold it to Don Abel for $100.

Cross-examination.

13. You say that you are a ranchero. What is the name of your ranch, and where is it situated?

Ans. The name is San Joaquin; it is some 13 leagues southerly from the city of Los Angeles.

14. Did you in 1846 have a house in the pueblo of Los Angeles?

Ans. Yes.

238 15. Where did you then chiefly reside—on the rancho or in the town?

Ans. In both places, but rather more in the pueblo.

16. Did you deliver your horses to Don Pio Pico at your ranch or at the pueblo?

Ans. At the pueblo.

17. Was it on the same day and at the same place that you delivered the horse you speak of to Jose Andrade?

Ans. It was one or two days after delivering the horses to Pio Pico that I gave Andrade one of the horses that remained over.

18. How many horses did you deliver to Pio Pico on that occasion?

Ans. I delivered half of my own; Don Avila the rest. My half was 10 horses.

19. Who received those horses in behalf of Pio Pico?

Ans. He received them himself.

239 20. What was the occasion, if you know, for this purchase of horses by Pio Pico?

Ans. He was gathering horses to come up to the upper country, north.

21. Did Pico start for the north soon after such delivery of horses by you? And how soon?

Ans. A considerable number of days elapsed; I can't say how many, but I know that they kept the horses in herding about Los Angeles.

22. Was it at your house, in the pueblo, that Andrade stopped, when you gave him that horse?

Ans. It was.

23. How long had Andrade been there when you gave him that horse?

Ans. He had been there several days, I don't remember how many; and two or three days after receiving the horses he went north.

24. Did you ever recover that horse given to Andrade? If so, when and by whom was it returned?

240 Ans. Andrade returned it to me when he came back with the forces of Jose Castro.

25. Did Pico go north before or after Andrade?

Ans. Andrade came up first.

26. Did Andrade come north alone?

Ans. He did.

27. How long before Pio Pico did Andrade go north?

Ans. I can't state how many days. It was several days. When Pico left for the north Andrade had already left.

28. Was it a week after Andrade's departure that Pico left?

Ans. I will not affirm. It might be more than a week; at all events it was several days after Andrade's departure when Pico left.

29. Was it two weeks?

Ans. It might be; I don't know.

241 30. Where did Andrade say that he had met Jose Castro on the road when he returned to Los Angeles with him?

Ans. I think he told me that he had met him at Santa Margarita or near the mission of San Miguel, in the county of San Luis Obispo.

31. Do you know Pablo de la Guerra?

Ans. I do. He is the brother of that Francisco de la Guerra who is my brother-in-law.

32. Did he visit Los Angeles in 1846, to your knowledge?

Ans. I do not remember. I saw him after in Los Angeles or Santa Barbara, but I don't recollect exactly about his being there at that time. Sometimes he stopped at my house, sometimes elsewhere.

33. Were you, in 1846, the owner of any neat cattle? If so, about how many head?

Ans. I had more than 8,000 head on and about my rancho of San Joaquin.

242 34. In what month of 1846 were the markings?

Ans. My markings, in former years, when I had plenty of cattle, took place pretty late; about July or August. This was the case in the year 1846.

35. Were your markings of 1846 over when Jose Castro arrived at Los Angeles with the forces?

Ans. They were at work marking at that time. I had a grown son, who attended to this.

36. Did you not attend in person the operations of gathering and marking cattle?

Ans. Sometimes I did.

37. Did you visit Santa Barbara in 1845?

Ans. I think I did.

38. Was Andrade there then?

Ans. I think not. I believe he was somewhere up here, north. I do not recollect well.

243 39. How long after Andrade's departure for the north did he return with the forces of Castro?

Ans. I do not know. I heard in my rancho that Pico and Castro had met and returned together. A few days after I went to the pueblo of Los Angeles, and some time afterwards they came there.

40. State for what reason you refused to purchase the grant to Andrade?

Ans. Because I did not know this place. I had never been here. I had no occasion for land up this way, and it seemed dear to me.

41. Who paid you for the horses delivered to Pico, and how much?

Ans. Eulogio Celis paid me long afterwards, after Pio Pico had gone away. He had agreed to give me $25 per head, and gave me only $14 or $15.

42. What, in 1846, was the reputation of Andrade for morality and correctness of habit?

244 Ans. He had the reputation of being a good man, who did no harm to any one.

43. How long is it since you have seen Jose Andrade?

Ans. About 4 years, perhaps a little more.

44. Where did you see him then—the last time?

Ans. He was at my house in the city of Los Angeles.

45. How did he then remain in Los Angeles?

Ans. A very few days; he came there from Pio Pico's house and told me that he was going to San Bernardino to work upon the roof of a house.

46. Before that time, had he been living long about Los Angeles?

Ans. He had been there but a short time working for Don Pio Pico.

Adjourned, by consent, to 17 July, 1862, 10 o'clock a. m.

JULY 17, 1862, 10 a. m.

Examination resumed. Parties all present.

245 Ques. 47. Do you know where Jose Andrade had resided immediately previous to his being employed on the ranch of Pio Pico, four years ago, as stated by you?

Ans. I do not know certainly, but it seems to me that he had come from Mazatlan.

48. Where does the claimant, Abel Stearns, reside, and where has he resided for the last 10 years?

Ans. Pueblo of Los Angeles.

49. Do you know how to read and write?

Ans. A very little.

50. Have you learned that little since 1846?

Ans. No; since my boyhood.

The witness here states that a year ago injured his right hand, which incapacitates him from writing his name, and at his request the commissioner signed it.

JOSE SEPULVEDA his ⋈ mark. Y. SERRANO.

246 Subscribed and sworn to before me this 16 day of July, A. D. 1862.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed July 17, 1862.

W. H. CHEVERS, *Clerk.*

Deposition of Luis A. Arguello, on part of claimant.

In the district court of the United States for the northern district of California.

THE UNITED STATES vs. ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 28th day of August, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Luis Antonio Arguello, a witness produced in behalf

247 of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land in the State claims of California, who, being duly sworn, testified as follows, his evidence being interpreted by counsel by consent.

Present: S. L. Johnson, esq., for claimant; W. H. Sharp, esq., U. S. att'y, and E. Lies, esq., for the United States.

Questions in behalf of the claimant.

Question 1st. What is your name, age, and place of residence, and occupation?

Ans. My name is Luis Antonio Arguello; my occupation is that of a ranchero; I reside at San Diego; my age is 36 years.

2. Do you know Benito Diaz? How long have you known him? Is he related to you in any way? If so, in what way?

Ans. I know him; I have known him for a long time. He is a relation of mine; he is a first cousin, son of a sister of my father. I have known him since about the time the colony came from Mexico.

248 3. Did you see the said Benito Diaz at any time during the year 1846? If so, say where you saw him, and about what time of that year, and what was the occasion of your then seeing him.

Ans. I saw him in the early part of May, 1846, in Los Angeles; the occasion of my seeing him was his asking me to loan him some money, which I did, and he has never returned it to me.

4. State where you were when he applied to you for this money—whether at Los Angeles or elswhere.

Ans. I was not in the city of Los Angeles. I was at the mission of San Gabriel, about eight or nine miles from the pueblo. He wrote me a letter there asking me to come to the pueblo.

5. What did you do on the receipt of this letter?

(Question, and all other testimony concerning the letter, is objected to, the same not being produced nor its loss shown.)

249 Ans. I went to Los Angeles; met him immediately. I accommodated him with the money and received a note from him for it.

6. Have you the said letter and note with you? If not, do you know whether they are in existence, and where they are?

Ans. I have not them with me; they ought to be among my papers in San Diego, if they have not been lost or mislaid. I think they must be there, unless they have been lost by some accident that I don't know of.

7. When did you last leave San Diego?

Ans. I last left San Diego about the 1st of June last.

8. Did you know then that you were going to be examined as a witness in this case?

Ans. I did not know it; I had no idea of it.

Cross-examination.—Questions by counsel for the U. S.

250 Ques. 9. How long is it since you have last seen the note and letter of Benito Diaz, of which you speak in your direct examination?

Ans. It is perhaps one year.

10. Did you, when you last saw those papers, examine them particularly?

Ans. I did not examine them particularly; I came across them by chance and put them aside.

11. What were you doing in San Gabriel at the time when Diaz sent for you to go to Los Angeles?

Ans. I had gone there to visit some of my friends: Felipe and Dolores, two half-breed Indians, brothers, whose father was an American.

12. Did you, in May, 1846, reside in San Diego?

Ans. I did.

13. How long, on this occasion, were you absent from San Diego?

251 Ans. I was absent from San Diego on that occasion some two or three months.

14. Was your said absence of two or three months before your lending the money to Diaz of which you have spoken?

(Objected to. Question withdrawn.)

15. How soon after lending the money to Benito Diaz did you return to San Diego?

Ans. It was very soon afterwards and in the same month of May that I returned to San Diego and went to my ranch, where I remained several months. The ranch of which I speak is called "Tijuan," and lies about ten leagues south of San Diego, in Lower California.

16. Are you related to Don Santiago Arguello? If so, what is your relation?

Ans. I am his son.

17. Where was he at the time you lent the money to Benito Diaz?

252 Ans. He was at Los Angeles. I came with him to Los Angeles on that occasion; he had some business there, but I cannot state what it was.

18. Where were you at the time that the American flag was raised in Monterey, in 1846, or where did you first learn of that event?

Ans. I do not remember where I was when I learned it.

19. Where were you when Governor Pio Pico left Los Angeles on his way to Lower California?

Ans. I was in one of the ranchos in the vicinity of San Diego when I heard that Pio Pico had passed.

20. On what business had Benito Diaz come to Los Angeles when you lent him the money?

Ans. He told him that he had come on some business of interest; he did not tell me what.

253 21. Did Diaz at that time fill any public office?

Ans. I believe he had some office in the northern country; I am not sure of it; that is my impression.

22. How long did Diaz remain at Los Angeles on that occasion?

Ans. I returned to San Gabriel the same or the next day, and went from that place to San Diego. I did not learn how long Diaz remained at Los Angeles. When I first saw him there, I think he told me that he had just arrived, or a few days before.

23. Have you any remembrance of any great event of public importance happening in California shortly before the occasion of seeing Diaz in Los Angeles?

Ans. I heard that Fremont had come in with a force with the bear flag; I do not remember any other public event of consequence. I was on a visit of pleasure with my friends at San Gabriel at their ranch.

24. How much money did you lend Diaz?

254 Ans. Sixty dollars.

25. Are you positively sure that you lent the money to Diaz in the beginning of May, 1846?

Ans. I am positively sure that it was in the early part of May, 1846.

26. By what circumstance, if any, do you remember the time so clearly?

Ans. Because I remember my money, which I never got back.

27. Was Pio Pico at Los Angeles when you lent Diaz the money?

Ans. I do not remember.

28. Was Jose Castro there then?

Ans. I do not remember.

29. Do you remember that in the year 1846 Pio Pico led an expedition from Los Angeles northern?

Ans. I have heard these things said. I was occupied with my business in the country, and paid little attention to public matters.

255 30. You state that you came to Los Angeles with Don Santiago Arguello, your father. Did he return to San Diego with you, or how long before or after?

Ans. My father remained in Los Angeles when I left there. I had been considerable time on my ranch when I learned that he had returned to San Diego. It might be one month or more after my departure that he left Los Angeles for San Diego; I cannot state accurately.

Deposition closed. Counsel for the United States reserves all due objection to the reading of this deposition in evidence or to its being closed now

before the production of the papers mentioned in the direct examination of the witness, as being within the control of the witness.

LUIS ANT'O ARGUELLO.

Subscribed and sworn to this 28th day of August, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com'r.*

256 Endorsed: Filed Aug. 28th, 1862.

W. H. CHEVERS, *Clerk.*

Deposition of R. C. Hopkins, for claimant.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 15th day of September, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced on behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his
257 evidence being taken by consent.

Present: Sidney L. Johnson, esq., counsel for claimant, and Eugene Lies, esq., and W. H. Sharp, esq., U. S. att'y, for the U. S.

Questions in behalf of the claimant.

Question 1st. Are you the same R. C. Hopkins who has heretofore given testimony in this case, and is your occupation the same as then, and what is it?

Ans. I am; my occupation is the same as then; it is keeper of the Spanish archives in the office of the U. S. surveyor general for California.

2. What is the document now shown you, who is the custodian, and what the place of custody of said document?

Ans. It is the espediente of the grant of the rancho of Los Huecos, or sobrante of the ranchos of Los Animas and Pala, granted to Luis Arenas and Juan Roland. I produce it from the Spanish archives in the custody of the U. S. surveyor general for California.

3. State whether said document is classed, numbered, or indexed
258 in any way; and if so, in what way, by whom, in whose handwriting if you know the same.

Ans. It is numbered 551 in the list of finished expedientes which are found in the archives. It is referred to in the Hartnell index, and the descriptive endorsement on the back of the same is in the handwriting of William E. P. Hartnell.

4. Please examine said document, and state in detail of what several papers or writings it is composed; whether you know by whom they are severally written and signed, and what are the means by which you know the same; and state by whom they are so written and signed, so far as known to you.

Ans. The petition, commencing on the first page, is, I think, in the handwriting of Luis Arenas. The marginal order, on the first page, is in the hand-

writing of Jose Matias Moreno, and the signature to the same is that of Governor Pio Pico. The decree of concession, commencing on the second and ending on the third page, is in the handwriting of Jose Matias
259 Moreno, and the signatures to the same are those of Governor Pio Pico and the secretary of states, Jose Matias Moreno. The borrador of the title, commencing on the fourth page, is in the handwriting of Benito Diaz. My knowledge of the handwritings and signatures referred to has been acquired principally by frequent comparisons and inspections of the same as they are found in the archives. I have, however, seen Gov. Pio Pico and Jose Matias Moreno write. The petition is signed by Luis Arenas and John Roland. With the handwriting of said Luis Arenas I am familiar, there being much of it in the archives. With the signature of John Roland I am not familiar, his name occurring but rarely in the archives, and never having seen him write.

5. Look at the other document now shown you; state what it is, whence it comes, how it came into its present custody, so far as known to you, and by whom written and signed, and your means of knowledge.

Ans. It is the grant to Luis Arenas and Juan Roland of the land described in the expediente referred to in my former answer. It is pro-
260 duced from the files of the papers belonging to the board of U. S. land commissioners. The body of the document is the handwriting of one Cayetano Arenas. It is signed by Governor Pio Pico and Jose Matias Moreno, secretary of state. The note of registry is in the handwriting of Moreno, and it is signed by himself. I am familiar with the handwriting of Cayetano Arenas, having seen and examined much of it in the archives. I have never seen him write.

6. What date does said grant bear?

Ans. It is dated on the 6th May, 1846.

7. State whether the borrador in the expediente referred to corresponds with the said grant in all material respects, or as nearly so as the borradors in the archives usually correspond with the original grants.

Ans. It corresponds substantially with the said grant, save in the 3d condition, the borrador containing the following words: "abransando las tierras de el cerro Colorado hacia los caidas del valle," which are not
261 found in the original grant. It is very usual to find slight discrepances between the original grants and the borradors. In the date of the borrador the word "seis" appears to have been changed from some other word. On inspection with a glass I am unable to determine what that word was. The concluding words of said borrador, to wit, "Pio Pico, Jose Matias Moreno, s'rio int'o," I think, are not in the handwriting of Benito Diaz, but that of Jose Matias Moreno.

8. Is the said Benito Diaz the same Benito Diaz by whom, as you have testified, the original grant to Jose Andrada, on which the claim in this case is based, was written?

Ans. He is the same.

9. Please annex a traced copy of the documents referred to to this deposition, to wit, the said espediente and grant to Arenas and Roland.

Ans. I do; they are marked Exhibits Hopkins No. 1 and 2.

262 10. State whether any book of record or registry or toma de razon of Mexican grants of the year 1846 has been found in the archives, or exists anywhere to your knowledge.

Ans. There has not, nor do I know of the existence of any such book.

Counsel for the U. S. having reserved by consent his objections until this stage, objects to the introduction of the documents in question and all evidence concerning the same, on the ground that it is not proved that the borrador was written at the time it bears date; on the further ground that no

explanation is given of the alteration in the date of the borrador, such date being a material part thereof, and the sole object of the introduction of the document; and generally on the ground that it is inadmissible and irrelavant.

Cross-examination waived.

Deposition closed.

R. C. HOPKINS.

263 Subscribed and sworn to this 15th day of September, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed Sept. 27th, 1862.

W. H. CHEVERS, *Clerk.*

Exhibit Hopkins No. 1, *to deposition of R. C. Hopkins.*

1846.

Los huecos e sobrantes del terreno que resultan en el parage de los Animas y rancho de Pala consedido a Luis Arenas y Juan Roland. No. 551.

[SEAL.] V. Sor Gobernador:

Luis Arenas y Juan Roland, vecinos de este departamento, ante V. E. con el debido respeto manifiestan que teniendo ambos algunos bienes de campo unico jiro de que subsisten mis familia y careciendo de terreno en que poner los para su conservacion y fomento ocurren a la bondad de V. E. suplicandole se digne concederles los huecos que resulten en los parages de los animas y canada de Pala pertenecientes a Don Carlos Weban y Jose de Jesus Bernal en la jurisdiccion del pueblo de San Jose Guadalupe, abrazande las tierras del cerro Colorado hacia las caidas del Valle, en la misma jurisdiccion hasta el completo de nueve sitios que consideran suficientes para el fin indicada cuya diseno ofrecen presentar a V. E. opportunamente. Por tanto A. V. E. reiteran se digne tener en consideracion lo espuesto y mandar seles estienda el titulo correspondiente de cuya gracia le viviran siempre reconocida sirviendose admiter esta en papel comun por falta de sellado.

264

Angeles, Mayo 5 de 1846.

LUIS ARENAS.
JOHN ROLAND.

Angeles, Mayo 5 de 1846. Estiendose el decreto de consesion y librese el titulo a los interesados para su resguardo.

PICO.

ANGELES, *Mayo* 6 *de* 1846.

Vista la solicitud con que da principio este espediente, con todo lo demas que se tuvo presente y ver convino usando de las facultades con que me hallo autorizado por el supremo gobierno a nombre de la nacion Mejicana, he venido por las presentes letras, en declarar a los Senores D'n Luis Arenas y D'n Juan Roland, duenos en propiedad de los terrenos sobrantes que hay en el terreno de las Animas y rancho de Pala, hasta el numero de nueve sitios de ganador mayor, en el concepto de que estos sitios estan fuera de las medidas del Sor D'n Carlos Wivar y D'n Jose de Jesus Bernal. Libreseles en consecuencia el titulo que les asegure su propiedad y reservese el espediente para someterlo a la aprovacion de la ex'ma asamblea departamental. Pio Pico, gobernador constitucional del departamento de Californias, asi lo mando decreto y firmo doy fe.

265

PIO PICO.
JOSE MATIAS MORENO, *S'rio Ynt'o.*

Pio Pico, gobernador constitucional de el departamento de California:

Por cuanto los S'ores D. Luis Arenas y D. Juan Roland, han solicitado para su beneficio personal y el de sus familias los huecos o sobrantes de terreno que resultan en el paraje de las Animas y el rancho de Pala, en la jurisdiccion del pueblo de San Jose Guadalupe, pertenecientes a los S'ores D. Carlos Wivar y D. Jose de Jesus Bernal, abrasando la tierras, (las tier-
266 ras) del cerro Colorado hacia las caidas del Valle, hasta el completo de nueve sitios; practicadas previam'te los averiguaciones que han sido necesarias con todo lo demas que se tuvo presente y ver conbino, he venido por decreto de dia, en uso de las facultades con que me hallo autorisado por el supremo gobierno a nombre de la nacion Mejicana, declarar como declaro a los S'ores espresados duenos en propiedad de las huecos o terreno sobrante en los ranchos antedichos y las tierras del cerro Colorado hacia las caidas del Valle, con arreglo a la ley de 18 de Agosto de 1824, y reglam'to de 21 de Noviembre de 1828, a reserva de la aprovacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. Podrar cercarlo sin perjudicar las travesias, caminos, y servidumbres, lo disfrutaran libre y esclusivamente, destinandolo al uso que mejor les convenga.

2a. Solicitaran del juez respectivo les de la posecion juridica en vista de este despacho, por el cual se le demarcaran los linderos con las respectivas mojoneras.

3a. El terreno de que se hace donacion es juramente de nuevo
267 citios de ganado mayor, y esta hubicado en los sobrantes o hueso que hay en los ranchos de los S'ores D. Carlos Wiva y D. Jose de Jesus Bernal, abrasando las tierras de el cerro Colorado, hacia las cuidas de Valle. El juez que les deposicion lo hara medir con arreglo a ordenanza a vista del deseno que presentaran los interesados.

En consecuencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en el libro que le corresponde y se entregue a los interesados para su resguardo y demas fines. Dado en la Ciudad de los Angeles en papel comun, por no haber sellado, a seis de Mayo de mil ochocientos cuarenta y seis.

PIO PICO.
J. M'TIAS MORENO, *S'rio Ynt'o.*

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of tht former Spanish and Mexican territory or depart-
ment of Upper California, as also the papers of the late board of com-
268 missioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the seven preceding and hereunto annexed pages of tracing paper, numbered from one to seven, inclusive, exhibit a true, full, and correct copy of a document entitled " 1846, los huecos o sobrante del terreno que resultan en el parage de Las Animas y rancho de Pala consedido a Luis Arenas y Juan Roland," as the same appears on file among said archives.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 31st day of Aug., 1862.

E. F. BEALE, [SEAL.]
U. S. Surveyor General for California.

Examined and found correct. KEEPER OF ARCHIVES.

Endorsed: Filed Sept. 27, 1862. W. H. CHEVERS, *Clerk.*

269 *Exhibit Hopkins No. 2, to deposition of R. C. Hopkins.—H. H.*

Pio Pico, gobernador constitucional del departamento de California:

[SEAL.] Por cuanto las Senores Don Luis Arenas y D'n Juan Roland han solicitado para su beneficio personal y el de sus familias los huecos o sobrantes de terrenos que resultan en el parage de los Animas y el Rancho de Pala, en la jurisdiccion del Pueblo de San Jose Guadalupe, pertenecientes a los Senores Don Carlos Wivan y Jose de Jesus Bernal, abrasando las tierras del cerro Colorado hacia los cuidas del Valle, hasta el completo de nueve sitios practicadas previamente los averiguaciones que han sido necessarios con todo lo demas que se tuvo presente y ver conbino he venido por decreto de este dia en uso de las facultades con que me hallo autorizado por el supremo gobierno, a nombre de la nacion Mejicana, declarar como declara a los senores espresados, duenos en propiedad de los huecos o terreno sobrante en los ranchos ante dichos y las tierras del cerro Colorado, hachia las cuidas del Valle con arreglo a la ley de 18 de Agosto de 1824, y reglamento de 21 de Noviembre de 1828, a reserba de la aprova-
270 cion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. Podran cercarlo sin perjudicar las travesias caminos y servidumbres los disfrutara libre y esclusivamente destinandolo al uso y cultivo que mejor les convenga.

2a. Solicitaran del juez respectivo les de la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos con las respectivas mojoneros.

3a. El terreno de que se les hace donacion es juramente de nueve sitios de ganado mayor y esta hubicado en los sobrantes o huecos que hay en los ranchos de las Senores Don Carlos Wibar y Don Jose de Jesus Bernal, el juez que diere la posesion lo hara medir con arreglo a ordenanza a vista del diseno que presentaran las interesados.

En consecuencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en el libro que corresponde y se entregue a los interesados para su resguardo y demas fines.

Dado en la Ciudad de los Angeles, en papel comun, por no haber sellado, a seis de Mayo de mil ochocientos cuarenta y seis.

PIO PICO.

271 JOSE MATIAS MORENO, *S'rio Ynt'o.*

Queda tomado razon de este superior despacho en el libro respectivo.

MORENO.

PIO PICO, *T. Y.*

8 20-60 o'cl'k p. m., 4 October, 1850.

J. T. RICHARDSON, *Recorder Sec.*

Recorded in Book of Deeds B, pages 85 and 86.

J. T. RICHARDSON, *Recorder Sec.*

No. 282, John Roland and J. L. Hornsby. Los huecos o sobrantes de Las Animas y Pala. Exhibit M. Original grant, part of the deposition of Ygnacio del Valle.

272 Filed in office Oct. 18th, 1859.

GEO. FISHER, *Sec'y.*

Recorded in Book of Rec. of Ev., vol. XVI, pages 18, 4, 19.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the 5 preceding and hereunto annexed pages of tracing paper, numbered from one to 5, inclusive, exhibit a true, full, and correct copy of an original document, together with the endorsements thereon, as the same appears on file in case No. 282 on the docket of said board of commissioners.

273 In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 25th day of Sept., 1862.

[SEAL.]

E. F. BEALE,
U. S. Surveyor General for California.

Examined and found correct.

KEEPER OF ARCHIVES.

Endorsed: Filed Sept. 27th, 1862.

W. H. CHEVERS, *Clerk.*

275 *Dep. of Luis Ant'o Arguello, on part of claimant.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 11th day of November, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Luis Antonio Arguello, a witness produced in behalf of claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by counsel by consent.

Present: Sidney L. Johnson, counsel for claimant; W. H. Sharp, U. S. att'y, and Eugene Lies for the U. S.

Questions in behalf of the claimant.

276 Question 1st. Are you the same Luis Antonio Arguello who was examined herein on or about the 28th August last?

Answer. Yes, sir.

2. Have you with you certain papers or any of them of which you made mention in your last examination as having passed between Benito Diaz and you? If so, produce them.

Answer. Yes, I have them.

(Witness here produces two papers, which are marked, respectively, by the commissioner Exhibit Arguello No. 1 and Exhibit Arguello No. 2.)

(The counsel for claimant herewith files a translation of said exhibits, which are admitted to be correct, endorsed translation of Exhibit Arguello No. 1 and translation of Exhibit Arguello No. 2.)

3. State whether you have been to San Diego for these papers since your last examination or how you procured them.

Answer. I went down to Los Angeles and from Los Angeles I sent
277 a vaquero to San Diego for them.

Cross-examined by counsel for the United States.

4. How long after the first day of your examination in this cause was it that you went to Los Angeles and by what conveyance?

Ans. It must have been in the first steamer after my examination.

5. How long did you stay in Los Angeles on that occasion?

Ans. Until the third steamer.

6. Who was the person that you sent to San Diego after these papers? Name him.

Ans. An Indian vaquero that I had there taking care of some horses. His name is Semai Juil, an Indian name.

7. State the exact nature of the message sent by you through him.

Ans. I sent by him a letter to a brother of mine, requesting him to send me two certain packages of papers that were in my trunk. I did not
278 inform him why I needed them. They came after five or six days, and among them I found the two papers now here produced by me.

8. Did you stop anywhere on your way down from San Francisco, or did you go direct to San Pedro and Los Angeles?

Ans. I went straight, without stopping anywhere.

9. Did you return to this place also by steamer?

Ans. I did.

10. Did you stop anywhere up on your return to this place?

Ans. I did not.

11. When did you return to this place?

Ans. About September, by the third steamer after my going down.

12. Have you been here since all the time?

Ans. I have not. I have been in different places; sometimes here, sometimes out of town.

279 13. Have you since your return from Los Angeles been at Monterey?

Ans. I have.

14. Did you see there your cousin Benito Diaz?

Ans. I did.

15. How long did you stay at Monterey on that occasion?

Ans. I think about three days.

16. Did you leave Benito Diaz at Monterey?

Ans. I did not.

17. Did he then accompany you to this place?

Ans. He left in the same stage.

18. Did he arrive here in the same stage?

Ans. He did.

19. Is he still here, and where does he put up?

280 Ans. I saw him this morning at about 7 o'clock. He stops at the Russ House.

20. Where do you stop yourself, and where, if you know, does the claimant, Abel Stearns, put up?

Ans. We both stop at the Russ House.

21. Was it immediately after your arrival at Los Angeles that you sent for the papers in question?

Ans. It was.

22. Do you positively assert that you found among the two packages of papers so sent to you from San Diego by your brother the papers now pro-

duced by you and marked Exhibit 1 and 2, and that the former is the identical letter which you said you have received from Diaz in May, 1846, and the latter the promissory note which you have said he made to you in the same month and year?

Ans. I do so assert.

23. Do you remember who it was that brought you Diaz's letter of 4th May, 1846, at San Gabriel? If so, state who.

281 Ans. I do not remember.

24. Are you related to the claimant, Abel Stearns?

Ans. I am not.

25. Are you connected by marriage with him?

Ans. I am not that I am aware of. The father of Mrs. Stearns married for his second wife my sister, but Mrs. Stearns was a daughter of the first marriage.

LUIS ANT'O ARGUELLO.

Sworn to and subscribed November 11th, 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed Dec. 10th, 1862.

W. H. CHEVERS, *Clerk.*

282 *Exhibit Arguello No.* 1.

ANGELES, *Mayo* 4, *de* 1846.

Sr. D. Luis Arguello:

MI ESTIMADO PRIMO: Tengo que salir de aqui dentro de tres o cuatro dias sin falta, pero me hayo sumam'te escaso de dinero, y no teniendo aqui otra persona de confianza o quien ocupar, le suplico me preste sesentas pesos, y sino los tiene busque los seguro que en yegando a Monterey se los mandare inmediatam'te espero me conteste luego o vengas a verme.

Dispense la molestia y mande a sa primo que lo aprecia.

BENITO DIAZ.

Exhibit Arguello No. 2.

Debo y pagare a D. Luis Arguello la cantidad de scsenta pesos que me ha prestado en plata los que debolvere tan luego como llegue a Monterey, y para la seguridad doy el presente en los Angeles a 5 de Mayo de 1846.

BENITO DIAZ.

283 *Translation of Exhibit Arguello No.* 1.

ANGELES, *May 4th*, 1846.

S'r Don Luis Arguello:

MY ESTEEMED COUSIN: I have to go away from here within three or four days without fail, but find myself extremely in want of money, and not having here any other person of confidence to whom to apply, I beg you to lend me sixty dollars, and if you haven't them to procure them, certain that on my arrival at Monterey I will send them to you immediately. I hope you will answer me quickly or come and see me.

Excuse the trouble, and command your cousin, who esteems you.

(Signed) BENITO DIAZ.

Translation of Exhibit Arguello No. 2.

I owe and will pay to D. Luis Arguello the sum of sixty dollars, which he has lent me in silver, which I will return as soon as I arrive at Monterey, and for his security I give the present at Los Angeles, the 5th of May, 1846.

(Signed) BENITO DIAZ.

284 *Dep. of Leander Ransom, on part of claimant.*

In the district court of the United States for the northern district of California.

THE UNITED STATES vs. ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 11th day of November, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Leander Ransom, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being taken by consent.

Present: Sidney L. Johnson, counsel for the claimant; W. H. Sharp, U. S. att'y, and Eugene Lies, for the United States.

Questions in behalf of the claimant.

285 Question 1. What is your name, age, place of residence, and occupation?

Ans. Leander Ransom; of lawful age; reside in San Francisco, and am a civil engineer and surveyor.

2. What has been your connection with the surveying department of the United States in California or elsewhere, and what opportunity have you had of knowing the manner of surveying private claims for land under Mexican or Spanish grants?

Ans. I was chief clerk in the office of the U. S. surveyor general for Cal. from 1851 to 1858, and as such chief clerk issued instructions for surveying several ranchos in this State, and in a few instances made surveys of the same in the field.

3. Do you know anything of the land claimed in this case, or have you ever made a survey or plot of the same? If so, when, at whose request, or by whose directions did you make the same?

Ans. Some two months since, at the request of Mr. Stearns, the claimant, I run some lines near the Mission Dolores, which he pointed out to me as
286 the exterior boundaries of the tract he claimed, being (600) six hundred varas square. I made a map of the survey which I presented to him, a copy of which, with some additional topography, is herewith presented.

(The witness here produce a map, which is marked by the commissioner Exhibit Ransom No. 1.)

(The counsel for the United States objects to the introduction of said exhibit, because the survey does not purport to be official.)

4. At the time you run those lines for the claimant were you acquainted with the title papers or grant under which the claim is made? And if not, state whether you have since become acquainted with them, and in what way.

Ans. At the time I ran the lines I had not examined the papers, but have since at the request of the claimant examined the translations of them in the archives of the surveyor general's office, and finding some discrepancies between the papers, I asked the opinion of Mr. Hopkins, the custodian of the papers, as to the true translation of the grant so far as the boundaries were concerned.

287 5. Look at the translation of the grant filed November 9, 1861, marked translation of Exhibit B, made by the said Hopkins, and say if the same agrees substantially with the translation which the said Hopkins made for you of the same document, or of the part of it describingthe land granted.

Ans. He gave me a translation of that portion describing the land, which is substantially the same as the translation in this document.

6. Look at the Exhibit Ransom No. 1, herein filed by you, and say whether the lines run by you and represented on said exhibit are a correct representation of the land described in the grant, and if not, in what respects you would modify the same to make it conform to the grant.

Ans. According to my understanding of the translation of the boundaries of the grant, I would commence at a point six hundred varas from the north boundary of San Miguel Ranch, on a direct line with the eastern boundary of the tract on the map colored green, confirmed, surveyed, and patented to Bishop Alemany, and extend lines at right angles to this base line,
288 forming a square of six hundred varas.

7. State wherein the base line now described by you would differ from that run by you, and represented on said Exhibit Ransom No. 1.

Ans. The base line that I speak of would vary about half a degree to the west as represented on the exhibit, by a dotted line, and would extend southward to the boundary of the San Miguel Ranch marked yellow. The other lines would be so run as to form a square of 600 varas on the easterly side of such altered base.

8. Say what is the object represented on said exhibit as the old tanyard building, whether any and what remains of it are now seen there, and how near the same the said altered base line would run.

Ans. The object marked "old tannery" is a dilapidated structure of part adobe and part brick, which was pointed out to me as a building once used for a tannery. The altered base line is intended to run near or close to this building.

289 9. State what is the object represented on the said exhibit as the old adobe wall, and how the said altered base line would correspond with the easterly line of said object.

Ans. The object marked old adobe wall is intended to represent the remains of an old wall, which was represented to me as a portion of the enclosure of the garden, and the base line is intended to correspond in direction with what was the old adobe wall on the eastern side of the tract confirmed, surveyed, and patented to Archbishop Alemany.

10. State whether there are any other buildings known as the mission buildings or buildings of the Mission Dolores, situated near or adjacent to the church, and on which side of the church they lie, and whether the front line of said buildings and church is parallel or not to line of Dolores street. If not, how such line diverges and in what direction.

Ans. There is a long row of adobe buildings connected with the main church building, and extending northwardly beyond the north line of Centre street, and nearly parallel with the westerly line of Dolores street. The northern end of these buildings is about opposite to the northern
290 point of the base line as corrected.

Cross-examination.—Questions by counsel for the United States.

11. Would the northerly end of the base line as corrected coincide with any part of the garden or orchard?

Ans. It would be, as near as I can estimate it, 180 feet north of the north end of the orchard; that is, of the tract patented to Archbishop Alemany.

12. Should not under the call of the grant at the beginning, such northerly end of base line be the starting point, and should not such starting point be in contact with some part of the garden or orchard under the following description in the grant, to wit, embracing from the orchard to a point beyond the tannery.

Ans. I fix the northern point where I do for the reason that when this grant was made a grant for the San Miguel Ranch existed, the northern boundary of which was probably known. I therefore make this line 600 varas from such northern boundary, presuming that was the intention of the grant.

291 13. Then, but for the existence of the San Miguel grant, you would consider that it was necessary to start from part of the orchard, and run your base line thence southwardly 600 varas, so as to strike or come near the tannery, extending beyond in that direction for quantity.

Ans. It is true the grant speaks of a tract embracing from the garden or orchard to a point beyond the tannery; at the same time it speaks of a tract lying in front of the mission; taking the two together, I would not consider it particularly important to start from a point on what is denominated the garden or orchard.

14. Look at translation of Exhibit B, and consider the wording of what is there entitled the 3rd condition, viz: "3d, the land of which donation is made is six hundred varas square, and is that which used to be occupied by the mission of San Francisco as an orchard and tannery." How does this description accord with your plat either as represented in Ransom's Exhibit No. 1 as you propose to correct it?

292 Ans. I make my corrected plat to correspond with the calls of the grant in the description in the first part of the grant, which appeared to me explicit. In the third condition to have it correspond with the first description, I suppose that the granting power intended to represent that a portion of this land had been occupied by a garden and orchard and by a tannery, as the base line as now proposed to be run would necessarily include grounds about the building used for tannery purposes.

LEANDER RANSOM.

Sworn to and subscribed this 11th day of November, A. D. 1862.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed December 10th, 1862.

W. H. CHEVERS, *Clerk.*

[Here follows map, page 292.]

293 *Deposition of Jacob P. Leese, on part of the claimant.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 15th day of November, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Jacob P. Leese, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of

Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: Sidney L. Johnson, esq., for claimant; W. H. Sharp, U. S. att'y, and Eugene Lies, esq., for the U. S.

Questions in behalf of the claimant.

294 Question 1st. What is your name, age, and place of residence?

Ans. My name is Jacob P. Leese; my age is 53 years, and I reside in Monterey, Cal.

2. How long have you resided in California, and in what parts of it have you resided, specifying the time of your residence in each?

Ans. I have resided in California since the year 1834 up to the present date. From 1834 to April, 1836, I resided in Los Angeles. From 1836 to 1841 I resided in San Francisco. From 1841 to 1848 I resided in the town of Sonoma. From 1848 to the present date I resided in Monterey.

3. While residing in San Francisco were you acquainted with the condition of the Mission Dolores, otherwise called mission of San Francisco de Asis? If so, state whether said mission was continued as a mission during that time or any part of it; whether there were any neophytes living at or dependant upon it; whether there were any, and what kind of stock belonging to it. If so, where such stock were herded. Were there any, and
295 what lands were cultivated by or on account of the mission?

Ans. On my arrival here in 1836 the mission of San Francisco was occupied by the priests who had charge of the ecclesiastical department; the temporal department was under an administrator, whose name was Gumecindo Flores. The lands cultivated by the Indians, which at that time was known as mission lands, were at San Mateo and in the valley which is known as Canada de Guadalupe, on a part of a ranch granted to me, known as the Ridley Rancho, which two localities were known as the residences of the Indians. The cattle and stock belonging to the mission was herded on the lands on the north side of the Burri-Burri Rancho. That continued until about 1837 or 1838, when Hartnell was appointed inspector under the secularization law, and came up here and took an inventory of the mission. I went out there with him. I know of no other change in the mission while I resided here.

296 4. From the time you first knew this mission what was the condition of the tract of land in front of the mission lying to the east of the old mission garden and tannery, say to the extent of six hundred varas square on the easterly side of said garden and tannery. Say whether said tract or any part of it was cultivated or enclosed, or occupied in any way by the mission, or its dependants during the time that you resided in San Francisco.

Ans. The land on the eastern side of the old mission garden and tannery was an open common from the time I resided here until I left.

5. Say whether at any time afterwards, if so, at what time, you ever saw one Leidesdorff on said tract or any part of it; and if so, about what part of it, and what, if any, improvements he had there, or what he was doing there.

Ans. In the spring of 1847, about May or June, I came over to San Francisco, and in a conversation with Mr. Wm. A. Leidesdorff he told me about having pigeons on his rancho, as he called it. I, wishing to get a pair,
297 remarked to him that I would like to get a pair of pigeons. He invited me to his place, and told me that if I would go out with him he would give me a pair. We rode over to the mission, to the place that he called his ranch, which was where he had a house, a piece of land under cultivation, and a brush fence, lying to the eastern side of the old mission garden, a little distance from it, I should think between two and three hundred varas.

Cross-examination.—Questions by counsel for the U. S.

Ques. 6. Did you ever visit the immediate neighborhood of the Mission Dolores previous to 1847?

Ans. I did, at various times from 1836 to 1841, and after 1841 going through there on my way from here to Monterey.

7. In what condition was the old mission orchard when you last saw it from 1841 to 1846?

Ans. in 1841 it was occupied, De Haro and the Valencias as a garden, who lived in the row of buildings attached to the northern side of the
298 orchard. The row of buildings on the northern side of the figure painted yellow in Exhibit K, corresponds, to the best of my recollection, with the buildings above referred to.

8. Where did Benito Diaz reside in the early part of 1846, if you know?

Ans. I know nothing about his residence except on information. I believe that he lived here in Yerba Buena. He was acting as a custom-house officer here.

(Question objected to as not properly a cross-examination, and the answer as being hearsay and incompetent.)

9. Have you any knowledge of Benito Diaz being elected in that year, 1846, to any office? If so, state what.

(Same objection as to preceding question.)

Ans. I have not.

Deposition closed.

J. P. LEESE.

Subscribed and sworn to this 15th day of November, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com'r.*

299 Endorsed: Filed Dec. 10th, 1862.

W. H. CHEVERS, *Clerk.*

Deposition of R. C. Hopkins, on part of claimant.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 17th day of Nov'r, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State
300 California, who, being duly sworn, testified as follows.

Present: Sidney L. Johnson, esq., for claimant; W. H. Sharp, U. S. att'y, and Eugene Lies, esq., for the U. S.

Questions on behalf of the claimant.

Question 1st. Are you the same R C. Hopkins who has heretofore been examined in this case?

Ans. I am.

2. Do you hold the same position in the office of the U. S. surveyor general which you held at the time of your former examinations in this case?

Ans. I do.

3. State whether in the espedientes of claims and grants made under the Mexican government, which are in your charge, there are many for tracts of land of a certain number of varas squares, and whether you have examined any number of them, and know the character of the proceedings in those cases.

Ans. There is a considerable number of such grants in the archives,
301 most of which I have examined.

4. State whether in those cases the claimant always or usually presented a diseno of the tract asked for.

Ans. He generally did not; in some instances he did.

5 Where, in the generality of petitions for such grants, were the lands asked for situated?

Ans. Generally in missions, though some were in the towns.

6. What was the character of the action of the governor in such cases? Were the orders and grants appearing in the archives in such cases uniform and regular in their character, and accompanied by as much formality as in cases of demands for sitios or leagues of land, or were they frequently more brief, informal, and incomplete?

Ans. Grants of this character were not usually so formal as those of ranchos.

Cross-examination waived.

R. C. HOPKINS.

302 Subscribed and sworn to this 17th day of November, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed Dec. 10th, 1862.

W. H. CHEVERS, *Clerk.*

Certified copy of counsel in case No. 103.

District court of the United States for the northern district of California.

THE UNITED STATES
v.
JOHN ROLAND. } No. 103 D. C.; No. 232 L. C.

It is admitted that on the 22d day of July, 1845, a grant was made by Gov'r Pio Pico, to John Rowland and Julian Workman, of four leagues of land in the present county of Los Angeles, California, and that the claim of said grantees has been presented and finally confirmed. Also, that on the 6th day of May, 1846, a grant was made by Gov'r Pio Pico, to Luis Arenas and John Roland, of the sobrantes, (surplus lands of the ranchos of "Las Animas" and "Pala,") to the extent of nine leagues, in the present county of
303 Santa Clara; that the actual extent of said surplus lands has not been ascertained; that the claim for the same was presented before the board of land commissioners in the names of J. L. Homsby (claiming under Luis Arenas) and John Roland, and was rejected by the board; that the claimants appealed from the decision, and the case is now pending in this court.

And it is admitted that the said John Roland mentioned in the two grants above referred to is the same person who is the appellant in this case, No. 103, March 12, 1862.

A. P. CRITTENDEN, *Att'y for Roland.*
P. DELLA FORRE, *for U. S.*

Endorsed: Filed March 12, 1862.

W. H. CHEVERS, *Clerk.*

I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the foregoing is a true, full, and correct copy of the original in the case of the United States *vs.* John Roland, No. 103, now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the
304 official seal of said court this 13th day of November, A. D. 1862.

[SEAL.] W. H. CHEVERS, *Clerk.*

Endorsed: Filed Dec. 10, 1862.

W. H. CHEVERS, *Clerk.*

Deposition of Domingo Feliz, on part of United States.

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 16th day of January, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Domingo Feliz, a witness produced in behalf of the
305 United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by counsel by consent.

Present: W. H. Sharp, esq., U. S. att'y, and Eugene Lies, esq., for the U. S.; Sidney L. Johnson, esq., counsel for the claimant.

Questions in behalf of the United States.

Question 1st. What is your name, age, occupation, and place of residence?

Ans. Domingo Feliz; 43 years of age; reside in the county of San Mateo, and am a farmer.

2d. Where did you reside in the beginning of 1846, and how long had you been there?

Ans. In the mission of Dolores; I had been there four years.

3. Do you know Jose Andrade?

Ans. I do.

306 4. Where did you know him first, and when?

Ans. I knew him in Monterey from 1843 to 1844.

5. Did you meet with him anywhere in the year 1846? If so, state where and under what circumstances.

Ans. I did; I saw him in 1846 at Santa Clara, serving in the force of the commandante general, Jose Castro. It was about the time when the bear flag was raised in Sonoma.

6. Did you and Andrade afterwards continue together? If so, state whether you went together.

Ans. We did remain together. After going to San Pablo, in the present county of Contra Costa, we proceeded to San Juan Bautista with the forces. From San Juan we went directly to Los Angeles. We remained there some twelve or perhaps fourteen days at the most. From there we started for Mexico. At the Rio Colorado I came back, and Andrade continued on to Sonora with the rest of Castro's party.

307 7. Previous to taking up your residence at the Mission Dolores, as you have stated, where did you reside?

Ans. I was born at the presidio of San Francisco. Ever since I was ten or twelve years old I resided at the rancho of Burri-Burri, in the present county of San Mateo, up to the time when I went to live at the Mission Dolores. During the time that I lived at the rancho I made frequent visits to the mission.

8. Did you ever know of Jose Andrade coming to the Mission Dolores previously to the taking of the country by the Americans?

Ans. No, sir.

9. Did you at any time in the year 1846 have any conversation with Andrade in regard to any tract of land in the northern country? If so, where, when, and under what circumstances?

(Question objected to as incompetent.)

Ans. I did. In the year 1846, when we went towards Mexico from Los Angeles, as I said before. We went from the mesas of San Felipe to an

308 Indian rancheria, called also San Felipe, where we remained two days with the whole of Castro's party. He had manifested considerable friendship towards me. As friends, we began to converse; he and I. He began to ask me about the lands of the Mission Dolores. He asked what were the best lands about the mission for him to take—a lot (solar) which he had there—because the government had granted him a tract or lot, (terreno o solar,) and he, Andrade, did not know the lands thereabouts.

(Answer objected to by counsel for claimant as irrelevant and incompetent. Andrade having already conveyed to the claimant the tract of land which had been granted by the Mexican government to him, could not be heard to impeach the grant. And the statements of the witness are further objected to as hearsay.)

10. At the time you left the Mission Dolores to join the forces of Jose Castro at Santa Clara, were there any occupants of any part of that land which lies immediately in front of the church, and extends towards the bay

309 some six hundred yards, and between the old tannery and what is now Center street?

Ans. Where Mr. Center now lives there lived then Jesus Noe; south of that there was nobody. Candelario Valencia lived in one of the old mission houses, on the left of Center street as you approach the church. He had a lot in one corner of the huerta or garden. There were several pear trees in that garden, perhaps twenty or thirty. Some three or four are still standing, I believe.

Cross-examination waived. Deposition closed.

DOMINGO FELIZ.

Sworn to and subscribed before me this 16th day of January, 1863,

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed January 17, 1863.

W. H. CHEVERS, *Clerk.*

310 *Deposition of Benj. R. Nisbet, on part of United States.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
ABEL STEARNS.
} In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 17th day of January, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Benjamin R. Nisbet, a witness produced in behalf of the Unted States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being taken by consent.

Present: W. H. Sharp, esq., U. S. att'y, and Eugene Lies for the U.
311 S.; Sidney L. Johnson, esq., counsel for the claimant.

Questions in behalf of the United States.

Question 1st. What is your name, age, occupation, and place of residence?

Ans. My name is Benjamin R. Nisbet; my age is over 21 years; my occupation is that of insurance agent. I reside in the city of San Francisco.

2. Have you any experience and knowledge as an expert in matters of handwriting? If yea, state what opportunities you have enjoyed of acquiring and exercising such knowledge and experience.

Ans. I have often been called upon to examine handwriting; have often done it, being in a banking office, engaged as teller, etc., for between fourteen and fifteen years. I think I have some experience as an expert.

3. Please examine separately and respectively two certain papers in evidence in this cause, marked Exhibit Arguello No. 1 and Exhibit Ar-
312 guello No. 2. Examine, also, three other papers now shown to you, one filed in evidence in this case before the land commission, marked "J. W. No. 1, dep. Pio Pico," and purporting to be an original grant by Pio Pico to Jose Andrade; another, purporting to be an original grant by Pio Pico to Benito Diaz, dated 25th June, 1846, and the third purporting to be a draft or copy of grant, by Pio Pico to Luis Arenas and Juan Roland, dated, as is likewise said grant to Andrade, the 6th of May, 1846. Compare carefully the said two first-mentioned Arguello exhibits with the three grants last mentioned, and state whether, in your opinion, said Arguello exhibits were written by the same hand, and at or near the same period, as the three grants aforesaid.

(Counsel for claimant objects to the foregoing question on the following grounds: first, that it is leading; second, that it is not the best evidence, and is incompetent; third, that the paper referred to, purporting to be a grant from Pio Pico to Benito Diaz, dated June 25th, 1846, is not in evi-
313 dence in this case.)

(Counsel for the U. S. here requests the witness to consider withdrawn from the question that relating to the grant from Pio Pico to Benito Diaz, dated June 25th, 1846.)

Ans. I think they are all written by the same party, but at a different time. They are also on a different quaility of paper.

(Counsel for claimant objects to the answer on the second ground of objection to the question.)

4. When you say in your last answer that the papers, though by the same hand, were written at different times, do you mean a difference of days, months, or years, and are the Arguello exhibits, in your opinion, the more modern or ancient in point of execution of the two sets of papers submitted to you?

(Counsel for claimant objects to the question on the ground that it is leading, and assumes that the witness has said that the Arguello papers were written at one time and the other papers at another, when the
314 witness has not in fact discriminated between the papers, or specified what papers were written at different epochs from other papers.)

Ans. I would say years. I think the grants were written before the Arguello papers.

(Question and answer objected to as incompetent and as not the best evidence.)

5. Please examine again the two same sets of papers with a view to ascertain whether any or either of them were written with a metallic pen or with a quill, and state your conclusion.

Ans. My opinion is that they were all written with a quill pen.

(Same objection as to last.)

6. Please examine the two Arguello exhibits with reference to whether, in either or both of them, any folds or creases which you may observe in the paper existed there before the handwriting was laid on, or were
315 made afterwards.

(Objected to as leading.)

Ans. That is something I don't know anything about; I should not think they were there when the writing was made; they may or they may not, I cannot tell. It would depend on how long the paper had been folded.

Cross-examination.—Questions by counsel for claimant.

Ques. 7. When did you first see these papers, or any of them, and who showed them to you and called your attention to them?

Ans. I think these are the papers I saw three or four weeks ago, perhaps longer; I don't recollect what papers they were; I don't recollect whether there were two papers or more, there may have been a dozen. I looked at some papers, how many I don't know; I saw them in this room; I don't remember who showed them to me; there were several persons in the room; Mr. Lies and Mr. Hoff were here; Mr. Hoff requested me to come and
316 look at them; Mr. Hoff remained for a few moments only in this room.

8. Can you be sure that no other papers were submitted to you for your examination and comparison at that time than those now exhibited to you?

Ans. I don't recollect the number of papers I saw; there may have been two, three, or four; there may have been more; I did not count them at all.

9. Do you say that the two papers called the Arguello exhibits were written at or near the same time?

Ans. I should think pretty nearly about the same time.

10. Are they both written on the same kind of papers?

Ans. They are not; they may have been manufactured the same year, but they are of different qualities of paper, one being thick and the other thin paper.

11. Look at the other two papers shown to you on your direct ex-
317 amination, one being the grant from Pio Pico to Jose Andrade, and the other copy or borrador of the grant to Luis Arenas and Juan Roland, and say whether they appear to be written at or near the same time and by the same hand.

Ans. Yes, sir, I think they were written by the same hand and about the same time; there is some little difference in the signatures. The balance, I should think, was all written by the same party. The third and last line in the third page of the borrador of the grant to Arenas and Roland was written by the same person who signed "Jose Matias Moreno, s'crio int.," to the grant to Andrade.

12. Are those two documents last referred to written on the same kind and quality of paper?

Ans. They are written on the same kind and quality of paper, but the grant to Arenas and Roland is commenced on the first page of the sheet, and the grant to Andrade is commenced in the second half of a sheet of
318 the same kind of paper, and, I think, on the fourth or last page of the sheet.

13. Is the grant to Andrade referred to, as it has been shown to you in this examination, on a whole or on a half sheet, and have you ever seen the other half of that sheet?

Ans. It is on a half sheet; I have no knowledge of having ever seen the other half sheet.

14. Give in detail your reasons for saying that the exhibits Arguello were written by the same hand with the other two documents shown you, but after an interval of several years, and say, if you can, how many years you suppose to have elapsed between the two periods; and give your reasons for determining the length of the interval.

Ans. My reason for saying that they are written by the same hand is that they look alike; and my reason for saying they were written several years later is that there is some change in the style of the writing or penmanship; that change appears to me more modern than ancient, but
319 in my opinion near enough alike to have been written by the same hand. I cannot say the number of years elapsing, two or more.

15. Is, then, your only reason for saying that the Arguello exhibits were written two or more years after the other documents the more modern character you find in the penmanship of the Arguello exhibits?

Ans. That is about the only particular reason I can give; I don't know of any other reason except in the general character of the handwriting.

16. What is there in the general character of the handwriting of the Arguello exhibits which make it, in your opinion, more modern by several years than the handwriting of the other two documents?

Ans. I see that many of the letters in the Arguello exhibits are formed, and some of the words, like the words and letters in the other two documents. The Arguello exhibits are written with a freer hand—more
320 easy—than the other documents?

17. Do you know who wrote the papers in question, or any of them, and have you any knowledge of the handwriting of the one whom you suppose to have written those papers, other than that which you derived from these papers themselves?

Ans. No; I don't know who wrote these papers, and don't know anything about them more than I have testified to.

18. Is there any difference between the two styles you have spoken of which may not be accounted for by difference of paper, pens, ink, health, feeling, and other causes which may affect the handwriting of a man from day to day? If so, specify particularly in what that difference consists.

Ans. There is one different kind of paper, to wit: Exhibit Arguello No. 1, but in my opinion the handwriting is the same as in the other three documents. There may be some difference arising from age and the kind
321 of pen used; if by a quill pen, from its being mended. I see a difference which I cannot account for, except by supposing that the Ar-

guello exhibits were written subsequently to the other documents. There is a difference in the formation of several of the letters; for instance in the tail or loop of the "y's." In the Arguello exhibits the "y's" tails are brought straight down, thus: "y;" in the other documents they seem to be brought up with a loop, thus: "y." The loops of the "g's" and "y's" are alike in the two grants. In the Arguello exhibits the "g's" are the same as some of those in the grants. In the formation of the "o's" there is some slight difference. There are some tails or flourishes in both documents, to the letter "o;" in some there are none. The capital "M's" are very much alike; those in the Arguello exhibits seem to be written more freely than the other, by a person who seems to have had more practice in writing, but very much like the "M's" in the two grants. I find no other differences in the formation of the letters to particularize; there are other letters which appear
322 somewhat changed in the style of writing, and I am guided by the general style and character of the writing of the four documents. I think they are all the same writing, but written at different times. I am guided by my eye which I cannot express in words, after a careful examination of the documents. So far as the figures are concerned, in the two sets of documents, I find some difference in the "8's" and "4's"; the "8" in the grants are not all alike; I find one "8" in the Roland grant that begins at the same point and goes around in the same direction as the two "8's" in the Arguello exhibits; that "8" in the grant leans more to the left in the upper curve than the "8's" in the Arguello exhibits. All the other "8's" in the grants begin at the opposite points and go round in opposite direction. The difference in the "4's" is very slight and not material.

Deposition closed.

BENJ. R. NISBET.

Sworn to and subscribed this 17th day of January, A. D. 1863, before me.

W. H. CHEVERS, *U. S. Com.*

323 Endorsed: Filed January 17, 1863.

W. H. CHEVERS, *Clerk.*

325 *Dep. of Jasper O'Farrell on part of the claim't.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 7th day of February, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Jasper O'Farrell, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being taken by consent.

Present: Sidney L. Johnson, esq., for claimant; W. H. Sharp, U. S. att'y, and Eugene Lies, esq., for the United States.

326 *Questions in behalf of the claimant.*

Question 1st. What is your name, age, occupation, and place of residence?

Answer. My name is Jasper O'Farrell; I am forty-six years of age; I am a farmer; I reside at Bodega, Sonoma County, in this State.

2. Are you acquainted with the claimant, Abel Stearns, and how long have you known him?

A. I am, and have known him since the spring of 1845.

3. Had you any correspondence with Abel Stearns in the year 1847?

A. I had.

4. Please examine three letters now produced by the claimant, and shown to you and marked O'Farrell, Exhibits Nos. 1, 2, and 3, and say in whose handwriting they are and whose is the signature thereto.

A. They are in my handwriting and they are signed by me.

5. Is there any date to the Exhibit No. 1? If not, please state if
327 you can about what time it was written by you.

A. There is no date to it. From the tenor of the letter it must have been written certainly after the occupation of the country by the American forces; how soon after I cannot recollect; but it must have been some time before the month of June, 1847. I judge from the tenor of this letter and of the subsequent ones.

6. What are the dates to Exhibits O'Farrell Nos. 2 and 3?

A. No. 2 is dated June 12th, 1847, and No. 3 July 12th, 1847.

7. Have you any recollection of having transmitted those letters or any of them by mail, courier, or otherwise, to Abel Stearns, about the times of their respective dates?

A. I have no definite recollection of by whom or how I sent them; they may have been sent by some trading vessel. I am certain I sent the letters.

8. Did you receive answers to them or any of them from Abel Stearns?

A. I received at different times several letters from Abel Stearns,
328 some of which I have in my possession and, others I have not.

9. Have you in your possession any letters of the claimant that purport or appear to be answers to the three said exhibits? If not, please state whether you have made careful search for them, and whether you know what has become of them.

A. I recollect distinctly having received an answer to letter No. 1, together with an enclosed map of the bay of San Francisco, asked for in that letter No. 1, together with other documents relative to a claim of Abel Stearns to a lot of 600 varas square at the Mission Dolores or San Francisco de Assis, which letter requested me to locate and attend to his interest with regard to that claim, and to which letter and enclosure I responded by letter No. 2, wherein I acknowledge the receipt of said map. I have made careful search for said letter of Abel Stearns and cannot find it. I have no idea what has become of it. It may have been burnt. I found other letters of his, but not that one.

329 10. You say in letter No. 3, dated July 12th, 1847, addressed to the claimant: "I have located your claim at the mission and shall send you the corresponding documents in a few days." Please state what was the claim you therein referred to, and whether you sent to the claimant the documents therein promised.

A. The claim referred to is the one I have already spoken of; I have always been under the impression that I sent the documents referred to, although Mr. Stearns told me the next time I saw him, about 1849, that he never received them.

(The latter part of the answer beginning with "although" objected to by the counsel for the U. S., because irresponsive and incompetent, and because it seeks to introduce a statement of claimant as evidence in his own behalf, and is hearsay.

11. State whether you have recently or at any time made search among your papers for any field-notes or other memoranda relating to or bearing

upon the said location of said claim; at whose request you made such search, and whether you found any such field-notes or other memoranda; and
330 if so, please produce them; if not, say, if you know, what has become of them.

(The counsel for the U. S. objects to the question, because it is incompetent and because it tends to the introduction of secondary evidence, without any proper foundation being laid for its introduction. Also because it assumes that witness not proved to be a surveyor hitherto, located the claim personally and took field-notes of survey.)

A. I had a search made by my clerk at the request of Abel Stearns; could not find any paper with reference to the claim or location, and do not know what became of them.

12. State in what capacity or by what authority you acted in making said location of said claim, whether you held at the time any official position; and if so, what position, and by whose appointment?

A. I made the location in the capacity of land surveyor. I do not know whether at the time I held any official position or not. I do not know whether that survey was made before or after my appointment by Governor Mason as additional land surveyor of the northern district of California.

331 *Cross-examination.—Questions by counsel for the U. S.*

Ques. 13. You state that O'Farrell Exhibit No. 2 was written in reply to a letter of Abel Stearns, which itself was an answer to O'Farrell Exhibit No. 1, whose date you cannot specify. State if O'Farrell Exhibit No. 2 was written soon after the receipt of said letter from Abel Stearns.

Ans. It must have been written the first opportunity I had of sending a response to Mr. Stearns, which may have been a month afterwards but not much longer.

14. State, if you remember, the nature of the documents said by you to have been transmitted to you by Abel Stearns enclosed in his answer to said Exhibit No. 1 and what has become of them.

Ans. It was a copy of the expediente or title deed to a lot of 600 varas square in front of the Mission Dolores, which he, Stearns, requested me to locate. I know not what became of them. I cannot find that copy.

15. In what language were they?

332 Ans. In the Spanish language, with which I was somewhat conversant.

16. Please look at Exhibits "B" and "F," attached to the deposition of R. C. Hopkins, purporting to be certified traced copies of a grant and expediente filed in this case, and state, if you remember, whether either of them appears to be similar to any of the documents so received by you from Abel Stearns.

Ans. The document "B," purporting to be a copy of the grant to Andrade, appears to be similar to the one sent me by Stearns.

17. Look at Exhibit "K" to deposition of Geo. Black, filed in this case, which purports to give an exact representation from actual survey of the land east of the Mission Dolores, and state where you would lay, as a surveyor, a line of six hundred varas, intended for the westerly base of a square of 600 varas, to correspond with the description at the beginning and on the 1st page of Exhibit "B" to deposition of R. C. Hopkins.

Ans. Supposing that the figure painted yellow, marked "orchard"
333 in Exhibit K, represents the object called "huerta" in Exhibit B, I would begin at the northeasterly corner of the "huerta" and run in a southerly direction a line, leaving the tannery to the west and terminating at a point 600 varas from the place of beginning. If the line were drawn parallel to the front of the mission the tannery would be about 303 feet to the west, according to the scale of Exhibit K.

18. Look at the description in the 3rd condition of said Exhibit B, and locate on Exhibit K a westerly base line, 600 varas long, according to the calls of such last-mentioned description.

Ans. According to that I should commence anywhere in front of the mission that was vacant land, and run my line south parallel with said mission buildings so as to include the "huerta" and the tannery.

19. Look at the description in what purports to be a traced copy of the petition of Andrade, and also at the description in what purports to be a traced copy of the governor's decree, dated May 6th, 1846, in said
334 Exhibit F, and state if the base line mentioned by you in your last answer would accord substantially with both or either of said descriptions.

Ans. It certainly could not.

Deposition closed.

JASPER O'FARRELL.

Subscribed and sworn to this 7th day of February, A. D. 1863, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed March 16, 1863.

W. H. CHEVERS, *Clerk.*

O'Farrell Exhibit No. 1.

Abel Stearns, esq.:

DEAR SIR: I hope you have escaped all misfortune during the late trouble in your part of the country. Previous to the war breaking out I wrote you, and hope you received my letter. I have to repeat to you my thanks for the trouble you have taken in regard to the papers of my farm.
However, I am all right, having purchased Berriessa claim. I have
335 got some extensive surveys to make here, particularly in the vicinity of the bay. I am now laying out the city of San Francisco, and another city on the straits, named Francisca, belonging to Gen'l Vallejo and a Dr. Semple, to which I wish to attach a map of the whole bay with soundings. I remember of seeing a survey of the bay with you. I therefore write to solicit a loan on a trace of this from you. I shall take care of it, and at the same time obligate myself to return a finished map of the bay and adjacent country to you. By having that will save me the trouble of a survey. Therefore you can judge the favor you will confer by letting me have it.

If I can be of any service to you this way, you will please command. I am sorry my expedition to the north was not earlier; it should have been had I known the turn of affairs.

I am, dear sir, yours, respectfully,

JASPER O'FARRELL

If you can, give the map to Capt'n Libbi or Smith, who will bring it to me.

336 *O'Farrell Exhibit No.* 2.

SAN FRANCISCO, *June* 12, '47.

Abel Stearns:

AR SIR: I have to acknowledge the receipt of your favor of the ninth of April ult'o, together with the accompanying map of the bay, for which allow me to return my thanks. I shall as soon as I have time, (being now rather pressed,) make you a finished copy.

I have been so engaged as not to be able as yet to make a survey of your claim at the mission, but I shall at the end of the week do so, and act as you direct in every respect.

You have no idea of how fast the town or city of San Francisco is improving; houses springing up in every direction; wharfs being built, &c., &c. I have no doubt of it becoming one day, and that not very distant, the empire city of the Pacific. Every day brings fresh arrivals from the Sandwich Islands—men of respectability and capital. The Pukes and Hoesers have already given way, and are, as usual, retiring before civilization.

I have just completed the survey of a new city at the straits of
337 Carquinez, Dr. Semple and T. O. Larkin proprietors. I think if you would divide your land here in lots of from one hundred to fifty varas square you could sell them at an advantage. I shall do so by hearing from you. The town authorities are having lots surveyed as far as the Mission Creek one hundred varas square, the most of which hills, and they are disposed of as soon Some have sold as high as one hu llars, and I no doubt but that I co get at least price for every one hundred vara lot where your land is situated.

Let me know your opinion of this, and believe me yours truly and respectfully.

JASPER O'FARRELL.

O'Farrell Exhibit No. 3.

SAN FRANCISCO, *July* 12, '47.

Abel Stearns, esq.:

D'R SIR: I have located your claim at the mission, and shall send you the corresponding documents in a few days. If you feel inclined to dis-
338 pose of the property, by informing me to that effect and letting me know the price in money, I will, if not unreasonable, become the purchaser.

I am, respectfully,

JASPER O'FARRELL.

Dep. of R. C. Hopkins on part of the U. S.

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 16th day of July, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Cougress in that behalf,
339 personally appeared R. C. Hopkins, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: W. H. Sharp, U. S. att'y, and Eugene Lies for the United States, and Sidney L. Johnson for the claimant.

Questions in behalf of the United States.

Question 1st. Are you the same R. C. Hopkins who has heretofore testified in this case?

Ans. I am.

2nd. State, if you know, the nature of the two documents now offered in evidence and marked Exhibits Hopkins L and M.

(Question objected to by counsel for claimant on the ground that they are irrelevant.)

Ans. Exhibit L is a translation made by me of an espediente and
340 grant of "Puntas de Lobos" made to Benito Diaz, being the same espediente and grant that were offered in evidence, the case of the U. S. *vs.* Palmer *et al.* Exhibit M is a translation of a certified copy found in the archives of a pronunciamiento by General Castro, in relation to the place of San Luis Potosi. Francisco Arce certified it to be a correct copy. The papers from which the translations are made are in my charge in the archives. In my haste to come up I could not lay my hands on them, but will produce them on the trial.

(Counsel for claimants objects to all the foregoing papers as irrelevant, and also on the ground that the originals have not been produced nor their genuinensss proved; and further, that the so-styled certified copy of the pronunciamiento is not the best evidence, that no foundation is laid for the admission of any secondary evidence, and no proof to render it admissible as secondary evidence has been offered.)

3. Have you made search for the original pronunciamiento, of which
341 the paper mentioned in your last answer purports to be a certified copy, and what was the result of such search?

Ans. I have, and have not been able to find it.

(Objection, question and answer both objected to on the ground that no proof has been made of the existence or genuineness of the supposed original, and on the ground of irrelevancy and incompetency.)

4th. State, if you know, the nature of a bound book now offered in evidence.

Ans. I do. It is a book in which was kept the salary accounts of the collector and officers of the custom-house. This book was recently brought from Santa Barbara, by order of the U. S. surveyor general. It is in the handwriting of Wm. E. Hartnell and Pablo de la Guerra. The last entries appear to have been made on 7th July, 1846.

(Objections received by consent of counsel.)

342 5th. Look at leaf 6 of said book and state the general nature of its contents.

Ans. It is the account kept in the custom-house against receptor Don Benito Diaz, for salary, &c. It appears to commence in 1844, and ends July 7, 1846.

6th. Translate the last three lines.

Ans. He is credited by his salaries for April and May. He is charged with $29, which he received in the month of June. He is credited by his salary to the 7th July.

7th. Please state the nature of a document now shown to you, marked in red ink Nos. 811, 812, 812, and 814.

Ans. It appears to be a manifest of the "Brig Eufamia." Sheet 814 is a statement of the cargo, with amount of duties on each package, or article, and is dated April 4, 1846, and signed by Wm. E. Hartnell. This
343 sheet is, I think, in the handwriting of Benito Diaz.

8th. Have you any doubt as to whose handwriting it is in?

Ans. I think it is the handwriting of Benito Diaz.

9th. State the nature of a document now shown to you and introduced in evidence, and marked in red ink N. 725, 726, 727, and 728.

Ans. Leaf 726 and 727 is the manifest of the American ship "Barnstable," dated Monterey, May 8th, 1846, signed by Enrique Mellus. Leaf 728 is a statement of the cargo, with amount of duty on each article, dated

custom-house, Monterey, May 16th, 1846, and signed by Wm. E. Hartnell. The body of this sheet is, I think, in the handwriting of Benito Diaz.

10th. State, if you know, whence the two last documents introduced in evidence have been produced.

Ans. They were recently brought from Santa Barbara, by order of the surveyor general.

344 11th. State the history and general purport of the letter now shown to you and marked in red ink N. 648.

Ans. It is a letter from Pablo de la Guerra to Wm. E. Hartnell, dated Santa Barbara, May 5th, 1846. This was also recently brought from Santa Barbara by order of the surveyor general. It is in the handwriting of Don Pablo de la Guerra.

12th. Describe in the same way document marked in red ink N. 649.

Ans. 'Tis a receipt given by Jose Antonio Castillo to the receptor, Benito Diaz, for $278, dated Yerba Buena, May 29th, 1846. This also was brought from Santa Barbara by order of the surveyor general. I don't know in whose handwriting it is.

By agreement of counsel the following objections are now entered to the questions, and answers, from question No. 4 to the end, and it is admitted they were made and reserved at the time.

345 1st. That all the documents offered in evidence are irrelevant, immaterial, and incompetent.

2d. That they are hearsay evidence, and no proof of the matter stated in them.

3d. That question 8 is leading.

4th. That the document referred to in and answer No. 12 is not shown to be in any known handwriting.

5th. That all of said documents are loose sheets, but recently brought to the archives of the surveyor general, and nothing more is shown respecting their past history and custody.

Cross-examination.

13th. When did you first know anything of the papers and book exhibited to you on your examination in chief? State all that you know of your own knowledge of the custody, and past history of said papers and book.

Ans. I never saw the papers and book referred to until about two months ago, when they were deposited in the office of the surveyor general

346 by Mr. Hinchman, who brought them from Santa Barbara, by order of the surveyor general. I know nothing except by hearsay of their past history and custody.

R. C. HOPKINS.

Sworn to and subscribed this 16th of July, 1863, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed July 21, 1863.

W. H. CHEVERS, *Clerk.*

Exhibit Hopkins L.

Fourth seal. Two reals.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

MAICHELTORENA.

PABLO DE LA GUERRA.

Most excellent senor governor :

Benito Diaz, a native of the Californias, and a resident of San Francisco, before your excellency, in due form of law, respectfully represents : That having some cattle, and not having any place to put them for their
347 increase, and there being a vacant place within the jurisdiction of San Francisco, known by the name of "la Punta de Lobos," bounded on the north by the sea which runs to the port of San Francisco; on the south by the hill (cerro) which is at the back of the mission of San Francisco, known by the name of the cerro of the Laguna Honda ; on the east by the loma alta, and on the west by the puntas de lobos, embracing a little more or less than two square leagues; it being observed that the ruins of the presidio of San Francisco and the Castillo, which are embraced within said tract, are exempted from the petition, unless the government should be willing to grant said ruins to the petitioner, obligating himself, in such event, to build a house in the port of San Francisco, for the use of the comandancia militar, which shall be twenty-five varas long and six wide. Wherefore, he prays your excellency to take into consideration his petition, conceeding him the land asked for, which he hopes from the goodness of your excellency, in which he will receive favor, swearing what may be necessary, &c.

348 Yerba Buena, April 3d, 1845.

BENITO DIAZ.

Marginal order.

ANGELES, *May 24th*, 1845.

Let this be passed to the respective judge for his report, and it is hoped that the senor comandante militar will say what he may know in relation to the matter, in order that in view of the whole the government may determine what may be proper to be done in the matter.

PICO.

Report of justice of peace.

In view of the foregoing superior decree, in relation to report upon the land which the petitioner asks for, I say that the same is vacant, and that said petitioner possesses the necessary requisites in accordance with the law in relation to the matter, but that as to the point which at present is occupied by the (punto militar) he cannot report, not knowing its egidos.

Pueblo de San Francisco, Aug. 16th, 1845.

JOSE DE LA C. SANCHEZ,

349 *Military comandancia of San Fran'co.*

OCTOBER 18th, 1845.

In conformity with the foregoing superior decree, issued by the excellent senor governor ad interim of this department, on the 24th day of May of the present year, I have to say that the land asked for by the petitioner being vacant, I believe it may be conceded, not including in said concession the two military posts of the Presidio and Castillo, which are embraced in the petition.

FRANCISCO SANCHEZ.

Pio Pico, senior member of the departmental assembly and constitutional governor of the Californias:

Whereas Don Benito Diaz has petitioned, for his personal benefit and that

of his family, the land known by the name of Punta de los Lobos, situated at the port of San Francisco, the necessary proceedings having been previously had, by virtue of the authority conferred upon me in the name of the Mexican nation, I have determined by decree of this day to concede to him the said land, declaring to him the ownership thereof by these pres-
350 ents, in conformity with the law of 18th of August, 1824, and the regulations of the 21st of November, 1828, subject to the approval of the most excellent departmental assembly, and under the following conditions:

1st. He may enclose it without prejudice to the crossings, roads, and servitudes, devoting it to the use or cultivation which may be most convenient.

2d. He shall solicit the proper judge to give him juridical possession by virtue of this dispatch, by whom the boundaries will be marked out with the necessary landmarks.

3d. The land of which donation is made is of the extent of two square leagues, a little more or less, comprehending from the laguna de la Loma Alta as far as Point Lobos, as is shown by the diseno found in the espediente. The judge who may give the possession will cause it to be measured in accordance with the ordinance.

In consequence whereof, I order that the present title being held as firm and valid, registry be made of it in the respective book, and that it
351 be delivered to the interested party for his security and further ends.

Given in the city of Los Angeles, on the twenty-fifth day of June, one thousand eight hundred and forty-six, on this common paper for the want of that which is sealed.

PIO PICO.
JOSE MATIAS MORENO,
Sec'y ad interim.

This title is registered in the corresponding book.

MORENO.

Endorsed: Filed July 21, 1863.

W. H. CHEVERS, *Clerk.*

Exhibit Hopkins M.

In the plaza of Monterey, of Alta California, on the 2d day of the month of April, one thousand eight hundred and forty-six, the senores chiefs and officials of this garrison and of other places of the department being assembled, the senor comandante general represented that the object of the meeting was to set forth the pronunciamiento made in San Luis Potosi, on
352 the 14th day of December, of the year last past, by the most excellent Senor General Don Mariano Paredes y Arrillago, and seconded in the capital of the republic by the most excellent Senores Generals Don Juan N. Almonte, Don Jose Ma. Tornel, Don Gabriel Valencia, and Don Pedro Ampudia.

Considering the justice of the motives which the said Senor General Don Mariano Paredes y Arrillaga manifested to the nation on the establishing of his plan "libertador," an enterprize worthy of such an illustrious chief, seeing in the said plan the sure and efficacious remedy for the grave evils which oppress the country, a guarantee of our rights, the salvation and defence of our territorial integrity, and, in a word, the regeneration of the republic. Persuaded that the clear-minded patriot who has so nobly embraced the national cause, will extend his protecting zeal towards this interesting fragment of the Mexican territory, now threatened by a foreign invasion, uncared for and almost abandoned by the former administration, notwithstanding the repeated communications and reiterated clamors of this

department to the supreme government. Finally, that the confidence
353 inspired by the names of the illustrious chiefs of the regenerating plan of San Luis Potosi may impel your senoria to adopt the same, acknowledging as president interino of the republic the most excellent Senor General Don Mariano Paredez y Arrillaga, as legally invested with the supreme authority, disregarding and protesting against all the acts of the former administration as far as relates to this department, the said acts being in direct opposition to the necessities of this people, and contrary to their votes, as given on repeated occasions, and lastly through the medium of Captain Don Andres Castillero, and that the comandancia g'ral of the department of Alta California will defend at all hazards the wise and patriotic plan of San Luis Potosi as being capable of saving the honor and integrity of Mexico, which is now attacked by our neighbors and rivals, the North Americans, the baleful influence of whom we will resent directly and forcibly, thanks to the abandonment of the apathetic and indifferent policy pursued by the former government in relation to its frontier departments. The said senores chiefs and officials, and the other functionaries present
354 in the junta said that they united in the sentiments and patriotic intentions of his senoria, and agreed and absolutely adhered to the said plan, and in witness whereof the sign.

Jose Castro, com't general.
M. G. Vallejo, colonel comandante of the north.
Juan B. Alvarado, colonel of cavalry.
Victor Prudon, lieutenant colonel of permanent infantry.
Jose Antonio Carrillo, comandante of squadron.
Jose Abrego, departmental treasurer.
Mariano Silva, com'te of artillery.
Pedro Narvaez, capt. of the port.
Joaquin de la Torre, capt. of cavalry.
Maredonio Padilla, lieutenant of infantry.
Francisco Arce, lieutenant of auxiliaries.
Ignacio Servin, sub-lieutenant of infantry.
Bautista Castro, ensign of cavalry.
Manuel R. Castro.
Jose Maria Soberanes.
Eugenio Montenegro, capt. of auxiliaries.
Antonio Ma. Samora, lieutenant of cavalry.
Mariano Villa.
Rafael Sanchez, oficial permanente.
Manuel Marquez, lieutenant of cavalry.
Juan de Cortaneda, perman't captain.
Franc'o Equere, lieutenant of infantry.
Jose Ma. Flores, permanent captain.
Man'l Garfias, sub-lieutenant of infantry.
Fran'co Lemon, lieutenant of auxiliaries.
Gabriel de la Torre, capt. of
355 auxiliaries.
Valentin Gajiola, lieutenant of auxiliaries.
Guadaloupe Soberanos, ensign of auxiliaries.
Juan Soberanos, sub-lieutenant of infantry.

I certify that the foregoing copies are faithfully taken from the original on file in the office of the secretary of the com't gen'l under my charge.

Monterey, May 7th, 1846.

FRAN'CO ARCE.

Translated from the original found on pages 211, 212, 213, and 214 of vol. 7, Dep. State Papers, now in the archives.

R. C. HOPKINS, *Keeper of Archives.*

Endorsed: Filed July 21, 1863.

W. H. CHEVERS, *Clerk.*

356 *Translation of Exhibit Hopkins N.* 648.

DEAR BROTHER: The mail which is carried by the soldier bearer of this is almost wholly for the custom-house, but is absolutely of no value. I opened it here, and the whole correspondence is endorsed within one envelope only. This afternoon or to-morrow I will follow on towards Los Angeles, and I hope shortly to be back in Monterey.

I believe that the Barnstable will arrive at the same time, because they believe here that she passed four or five days ago.

I hope that you will not have too much trouble.

Compliments to all and dispose you of your brother.

P. DE LA GUERRA.

The correctness of the foregoing exhibit admitted.

Endorsed: Filed July 21, 1863.

W. H. CHEVERS, *Clerk.*

357 *Deposition of Rafael Pinto, on part of the United States.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 16th day of July, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Rafael Pinto, a witness produced in behalf of the United States in the above-entitled cause, now pending in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by counsel by consent.

Present: W. H. Sharp, U. S. att'y, and Eugene Lies, of counsel, for U. S., and Sidney L. Johnson for the claimant.

Questions in behalf of the United States.

358 Question 1st. What is your name, age, and place of residence?

Answer. Rafael Pinto; 45 years of age, and a farmer, and reside at Watsonville, Santa Cruz County.

2nd. How long have you lived in California?

Ans. From my birth.

3d. State whether, in 1846, you had any, and what, public office.

Ans. I was receptor of the custom-house at Yerba Buena.

4th. From what time did you begin to fill that office?

Ans. I began in 1845, and kept the office until the Americans took possession of San Francisco—I mean the U. S. sloop-of-war Portsmouth, Capt. Montgomery.

5th. Did you remain at Yerba Buena all the time from your inauguration in office until the taking of the place by the Americans.

(Question objected to as leading.)

Ans. No; I had to go sometimes to Monterey.

359 6th. Where were you in the month of April, 1846?

Ans. At Monterey.

7th. How long did you stay at Monterey on that occasion, and where did you go from that place?

Ans. I was at Monterey, perhaps, all the month of April, and about the 30th of April or 1st of May I went to Los Angeles.

8th. Do you know Benito Diaz?

Ans. I do, very well.

9th. What, if any, office did he hold at the time you left Monterey for Los Angeles, at the end of April or beginning of May, 1846?

Ans. He was celador (inspector) of the custom-house at Monterey.

(Question and answer objected to as not the best evidence.)

10th. Do you remember where Benito Diaz actually was at the time you left Monterey for Los Angeles, in 1846?

360 Ans. He was at Monterey, employed as a celador of the custom-house.

11th. Have you in your possession any written or other proof as to what person, if any, filled your place as receptor at Yerba Buena during your absence in May, 1846, from that place?

Ans. I have, and now produce the order of the administrator of the custom-house at Monterey appointing Benito Diaz to act as sub-receptor of Yerba Buena until I should return.

12th. State, if you know, in whose handwriting the document of which you speak, and now produced by you, is, where you found such document, in whose handwriting is the direction on the envelope, and whether such envelope enclosed said order at the time it came into your possession.

Ans. The handwriting of the body of the document and of the direction on the envelope is that of Guillermo Edwardo Hartnell, whose office was that of a vista of the custom-house, but at this time was acting as administrator of the custom-house. I found this order among a part of the

361 archives of the custom-house at San Francisco, which is in my possession. The order was within the envelope, when I first found it, exactly as it is now. When the Americans took possession of San Francisco I packed the archives of the custom-house at San Francisco, together with the Mexican flag, in a trunk. I still have those objects, except some papers and books which have been stolen from me.

(The commissioner here marks the envelope Exhibit Pinto No. 1, and the order, Exhibit Pinto No. 2.)

13th. About how many days did you consume in your trip from Monterey to Los Angeles, about the beginning of May, 1846?

Ans. I do not remember exactly, but it may have been about seven days.

14th. During such trip to Los Angeles did you meet Benito Diaz, or see or hear anything of him on the road?

Ans. I did not see him, nor hear, nor know of him.

15. State what was the usually travelled road at that time from Mon-

362 terey to Los Angeles.

Ans. It was the same road that is now travelled by the coast along the missoms; from Monterey along the Salinas Plains to the Mission Soledad; thence San Antonio, San Miguel, San Luis Obispo, La Purisima, Santa Ynez, Santa Barbara, San Buenaventura, San Fernando; thence to Los Angeles.

16th. Was Benito Diaz a skillful or practised horseman?

Ans. He was not. He could ride, but could not run much on horseback. That was not his business. We called such men inutil (worthless) as to their riding.

17th. Do you know Vicente P. Gomez and Jose Andrade?

Ans. I do.

18th. Were they, in 1846, reputed to be practised horsemen?

Ans. I cannot say much as to Jose Andrade, but Vicente Gomez was also a poor horseman.

363 19th. Was there any other way in 1846 of going from Monterey by land to Los Angeles, except on horseback?

Ans. There were no carriages, nor carriage roads.

20th. When you left Monterey for Los Angeles, in 1846, was there any vessel in port that was about to sail for the leeward ports of Alta California?

Ans. I do not remember.

21st. From what you know of the horsemanship of Benito Diaz, about how many days would it have required him to ride from Monterey to Los Angeles, or vice versa?

Ans. Travelling in the daytime alone Benito Diaz could have gone to Los Angeles and returned to Monterey in 16 or 18 days of travel.

22d. Look at a paper now shown you, being the last sheet of a paper here introduced in evidence in connection with the deposition of R. C Hopkins, marked N. 725, 726, 727, and 728 in red ink, said last sheet being marked N. 728, and state, if you know, in whose handwriting
364 are the several entries on both sides of said sheet.

Ans. The handwriting is that of Benito Diaz except the last eight lines, which were written by Jacinto Rodriguez. The signature is that of Guillermo Edwardo Hartnell.

23rd. Look at the last sheet of a paper introduced in evidence in connection with the deposition of R. C. Hopkins, marked in red ink N. 811, 812, 813, and 814, said last sheet being marked N. 814, and state, if you know, in whose handwriting are the several entries on both sides of said sheet?

Ans. It is all in the handwriting of Benito Diaz, except the signature, which is in that of Hartnell.

Examination adjourned until to-morrow at 10½ o'clock a. m.

W. H. CHEVERS, *U. S. Comm'r.*

SAN FRANCISCO, *Cal., July* 17, 1863.

Examination resumed from yesterday. Present: All the parties.

365 24th. Look at a document hitherto introduced in evidence in connection with the deposition of R. C. Hopkins, marked in red ink N. 648, and state, if you know, in whose handwriting are the body and signature of said document.

Ans. In that of Don Pablo de la Guerra, who was the administrator of the customs at Monterey.

25th. What opportunities have you had to become acquainted with the handwritings and signatures of Benito Diaz, Jacinto Rodriguez, William E. P. Hartnell, and Pablo de la Guerra, which you have sworn to in this examination?

Ans. The opportunity consists of my having lived with them on terms of friendship many years, being employed in the same custom-house and seeing them write.

Cross-examination.

26th. What was the occasion of your trip to Los Angeles in 1846?

Ans. It was because I was invited by Don Pablo de la Guerra to accompany him there.

366 27th. Did you keep company with him on the whole of that journey?

Ans. I did.

28th. Were you and he the only ones on that journey? If not, say who else accompanied you.

Ans. There were no others except two or three soldiers; at least, I do not recollect any others.

29th. When did you arrive at Los Angeles? State the day as nearly as you can.

Ans. I don't recollect well; it may have been the 8th or 9th of May, perhaps.

30th. How long did you remain there?

Ans. I don't recollect.

31st. When did you return to or arrive at Monterey?

Ans. I don't recollect the date of our arrival there.

32. Was it in the month of May, 1846?

367 Ans. I don't recollect whether it was in the same month; I think it was.

33rd. Did you, in going to Los Angeles, stop at any place on the road, except to take a night's rest? If so, say where you stopped and how long.

Ans. We stopped in Santa Barbara. I don't recollect how long; perhaps one or two days.

34th. In what house did you stop there?

Ans. In the house of Don Jose de la Guerra, father of Don Pablo de la Guerra.

35th. What route did you take in returning?

Ans. The same we took in going.

36th. Did you stop anywhere on the way longer than the necessary halts for rest? If so, where and for how long?

Ans. I don't recollect whether we made any halts on our return.

368 37th. How happens it that you can fix the time of your departure from Monterey on one of two days, either the 30th of April or the 1st of May, 1846, and you cannot determine the time of your return there?

Ans. I recollect the day of departure better on account of having received money for making the journey.

38th. Did your salary of office continue to run on in your favor during your absence on this journey?

Ans. It did. I had a permission from the custom-house to be absent some time from my post at San Francisco, and because also I was accompanying at this time the administrator of the custom-house.

39th. What makes you recollect that at the time of your departure from Monterey for Los Angeles, on the 30th of April or 1st of May, 1846, Benito Diaz was at Monterey in the capacity of celador of the custom-house?

Ans. There is no circumstance, except that we were a good deal together, and I recollect seeing him there. I don't recollect seeing him the very

369 day of my departure; it might have been the same day or a day or two before.

40th. Does your recollection amount to anything more than that of the fact that you were in the habit of seeing him there, and don't recollect having noticed his absence?

Ans. I have no particular circumstance to determine his presence there at that particular time, more than the habit we had of seeing one another there all the time.

41st. What was the office of Benito Dias at that time? Where did he exercise it? Was it only at Monterey? Did it oblige him to remain and reside constantly at Monterey?

Ans. He was celador of the custom-house. He exercised his office in Monterey, but the custom-house could send him anywhere it pleased to discharge this office. I don't recollect whether or not he was sent to San Francisco during the year he held this office; I don't think he was. I was appointed receptor of the custom-house at San Francisco on the 30th

370 of August, 1845, in place of Benito Dias, who had previously held that post, and he at that time was appointed celador at Monterey.

42d. Who discharged the duties of receptor at San Francisco during the month of April and the first half of May, 1846, during all of which time you say you were absent from there?

Ans. Don Maximo Fernandez, celador at San Francisco, and my subaltern was charged with the duties of my office in my absence.

43d. Did you pass the whole month of April, that is, the whole time of your absence from San Francisco until your departure from Monterey for Los Angeles, in the town of Monterey? If not, say where you were during that time.

Ans. I did pass it in Monterey, because my family was there.

44th. Where did you pass the month of March, 1846?

Ans. A part of it in San Francisco; I am not sure of having passed
371 the whole of it there. I remained in San Francisco until I left for Monterey.

45th. Before your appointment as a receptor at San Francisco did you hold any office? What was it, and where?

Ans. I was celador at Monterey.

46th. Was there any difference in the rank of these offices? Which was the superior office?

Ans. The receptor held the higher office inasmuch as he was chief of the custom-house where he was, but the pay of both offices was the same.

47th. Look at the book introduced in evidence in connection with the deposition of R. C. Hopkins, at leaf 6, and say whether you know in whose handwriting it is, and say what it purports to be, and whether you have any knowledge of any of the items or details found on said leaf.

Ans. It seems to me to be the handwriting of Mr. W. E. P. Hart-
372 nell. It seems to be the account of Benito Dias as receptor of San Francisco. It appears to begin with the end of March, 1844, and to end with the 7th of July, 1846. I have no recollection of any of the transactions which appear to be stated there.

48. Look at leaf 9 of the same book and say in whose handwriting it appears to be, what it purports to be, and whether you recollect any of the details or transactions mentioned therein.

Ans. It seems to be in the same handwriting—Mr. Hartnell's. It appears to be my account, as celador, from the 26th of March, 1844, to the 7th of July, 1846. I remember the payment of $58 95 in April, and that my attorney, Don Jose Abrego, received money for me. On looking at document marked, in red ink, "N. 709" and "N. 708," I find that I receipted for the sum of $58 95 as and for my pay to the end of March, 1846, which paper contains also several other receipts, and is dated at the foot of them all "Monterey, April 30th, 1846," and signed "Hartnell." This last-men-
373 tioned paper contains on the leaf marked "N. 709," in red ink, six receipts, the signatures to which are the genuine signatures of those whose names are signed thereto; the bodies of the receipts are in the handwriting of Jacinto Rodriguez; the date appears to be in the handwriting of Hartnell.

(It is agreed between the counsel that this paper marked "N. 708," "N. 709," in red ink, is one of the papers produced yesterday by R. C. Hopkins, from the archives of the surveyor general, said by him to have been lately brought from Santa Barbara by A. F. Hinchman under orders from the surveyor general, and to be considered as having been introduced in connection with the deposition of R. C. Hopkins, and subject to the same objections as the other papers introduced by him of the same class and origin.)

49. Did you deliver to A. F. Hinchman the whole trunkfull of papers relating to the custom-house, at San Francisco, relating to the Mexican government, which you say you have had in your possession, or any
374 of the papers therein?

(Objected to, because the witness has sworn that he still retained the possession of said archives, except such as were stolen from him.)

Ans. I did not deliver any to him. He did not ask me to deliver any. What he told me was that if I had any papers relating to the matter in which I was summoned to testify, I should bring them with me.

50. Did he produce or show to you any order or writing for that purpose, either from the surveyor general or the court?

Ans. He did not show me any writing whatever. After returning he wrote me a letter telling me to come and at what time.

51. Did he examine the papers in said trunk at any time?

Ans. He was looking at some of them.

52. Did you or he, on that occasion, examine the whole of them?

375 Ans. I examined them all. He did not examine them all.

53. Did he tell you what he wanted them for? State all that he told you about it.

Ans. He told me to bring any papers I had to show where Benito Dias was at such a date in 1846. The date was in the month of May, 1846.

54. Did you, with this object in view, examine all the papers in your possession, and bring all that you found bearing upon that question? Have you already, in this examination, produced and sworn to and testified to all such papers? If not, say what else you have or know of relating to that question.

Ans. I more or less examined all, though not very fully, and I brought with me all those I found treating of this subject. I have already produced in this examination and testified to all the papers bearing upon that question.

376 55. Were you in 1846 what you would call a good horseman?

Ans. I knew how to ride very well. I could do anything that a vaquero could, except to break colts.

56. Did you ever go on a journey with Benito Diaz or Vicente Gomez? If so, when and where?

Ans. Yes; we all three once went together from Monterey to Los Angeles, as defenders of the country, about the time of taking Monterey by the Americans. I was with Benito Diaz on other occasions in 1836, in the revolution of that date, and on various occasions.

57. Was he not able on such occasions to keep with the rest of the company? If not, was he left behind, or did the rest of the company slacken their paces for him?

Ans. He kept along with us.

58. Was he not able to ride a horse on a gallop, or was he obliged to confine himself to a walk or a padre's trot?

377 Ans. In the march of the troops of soldiers he was an officer and I was an officer, and we generally walked or trotted. Benito Dias was capable of galloping two or three hours or even a day, but he was not able to ride an express with much dispatch for several days.

59. What sort of a horseman was Don Pablo de la Guerra in those days?

Ans. He was not what I should call a good horseman, but he knew how to ride; he was not afraid, and could stand it.

60. What sort of riders were the soldiers that you say accompanied you and Don Pablo to Los Angeles in May, 1846?

Ans. They were good riders.

61. Do you think Benito Diaz could not have kept up with you on that trip?

Ans. I don't think he could have gone as we did; it would have hurt and tired him very much.

378 62. Were you at any time with Gen'l Jose Castro in the year 1846? If so, state when you joined him, where you went and how long you remained with him.

Ans. I joined him in the latter part of June, 1846, at Santa Clara, and I remained with him until he left Los Angeles for Sonoma. It was after the

hoisting of the bear flag that I joined Gen'l Castro in Santa Clara. I marched with him to San Lorenzo.

63. Do you recollect when Fremont, now known as Gen'l Fremont, was at or near San Juan? State, if you can, when that was.

Ans. I cannot recollect the date. I think it was before I joined Gen'l Castro.

64. At what time did Gen'l Castro leave Monterey for Santa Clara in 1846?

Ans. I don't know at what date he left Monterey for Santa Clara. It was in June that I received the order to join him there.

379 65. At the time you joined him there what force had he with him?

Ans. I don't recollect the number, but he had some soldiers and good many volunteers.

66. What was the date of the commencement of the march of Gen'l Castro and forces from Santa Clara towards Monterey, after his return from San Lorenzo?

Ans. I set out ahead of them for San Juan, and don't know at what date Gen'l Castro left there. He arrived at San Juan and left there for Los Angeles after the taking of Monterey by the Americans, on the 7th of July. I, don't recollect the exact day of our departure, but it was soon after.

67. What was the date of your arrival at Los Angeles on this occasion?

Ans. I cannot recollect.

68. Did you meet any force of Californias anywhere on the road to Los Angel's? Did you meet Gov. Pio Pico anywhere on the road? If so,

380 say where.

Ans. We met a force under Gov. Pio Pico at Santa Margarita, near San Luis Obispo. I don't recollect at what date.

Direct examination resumed.—Questions by counsel for the U. S.

Ques. 69. Produce, if you can, your appointment as receptor of Yerba Buena.

Ans. I here produce it.

(Counsel for the U. S. offers the document in evidence. The envelope is marked "Exhibit Pinto No. 3," and the enclosure, "Exhibit Pinto No. 4," to be annexed hereto.)

70. State whether the signature to that document is genuine; what office the signer held at that time, and whether, under that authority, you took possession of that office in Yerba Buena.

Ans. The signature is the genuine signature of Juan Bautista Alvarado, at that time administrator of the custom-house, and under the authority of this document I took possession of the office.

381 Deposition closed.

RAFAEL PINTO.

Subscribed and sworn to this 17th day of July, A. D. 1863, before me.

W. H. CHEVERS, *U. S. Com'r.*

Endorsed: Filed July 21, 1863.

W. H. CHEVERS, *Clerk.*

Exhibit Pinto No. 1, *W. H. C.* (S. N.)

[Seal.] S'or Receptor interino del puerto de S. Francisco D. Benito Diaz.

Exhibit Pinto No. 2, *W. H. C.*

[Seal.] Se hace necesario para el mejor servicio, que vaya V. a hacerse cargo interinamente de la receptoria de San Francisco mientras llegue el receptor en propiedad o concluyo V. con el asunto de la barca Inglesa "Vancouver" en los terminos que esplican las adjuntas instrucciones, por

tanto procurara V. llegar sin demora a ese destino, y cumplir exactamente con los referidas instrucciones, en la inteligencia que si no hubiese proporcion de buque para remitir los fondos, que va V. a cobrar, los dejara
382 V. con el que quede encargado de la receptoria, a su salida de V. para que el los remita cuando haya proporcion.

Dios y libertad. Monterey, 16 de Mayo de 1846.

GUILL'O ED'O HARTNELL.

Exhibit Pinto No. 3 to depo. of R. Pinto. (S. N.)

[Seal.] S'or Celedor D'n Rafael Pinto, Monterey.

Exhibit Pinto No. 4 to depo. of Rafael Pinto.

ADUANA MARITIMA DE MONTEREY.

Conociendo al mejor servicio de la hacienda el que V. se encargue de la administracion de la sub-receptoria del puerto de S. Fran'co saldra V. para ese destino a la mayor brevedad; y a su llegada a d'ho puerto presentara V. este nombramiento a D. Benito Diaz actual encargado de d'ho sub-receptoria, quien tiene orden de entregar a V. todos los enseres de d'ho oficina con las formalidades de estilo y bajo inventario por duplicado. Cuando haya V. tomado posesion del nuevo destino q. se le ha conferido, dara V. a esta oficina el correspondiente aviso, y cumplira V. estrictamente las ordenes e instrucciones q. de tiempo en tiempo por ella se le comuniquen.
383 Dios y libertad. Monterey, 30 de Agosto de 1845.

JUAN B. ALVARADO.

S'or Celador D'N RAFAEL PINTO,
Nombrado receptor del p'to de S. Fr'n'co.

Translation of Exhibits Pinto No. 1 and 2, attached to deposition of Rafael Pinto, in behalf of U. S.

[Translations.]

EXHIBIT PINTO No. 1, "S. N." (national service.)

[Custom-house seal.] Mr. Receptor ad interim of the port of San Francisco, Don Benito Diaz.

EXHIBIT PINTO No. 2.

[Custom-house seal.] It has become necessary for the good of the service that you should go to take charge, temporarily, of the receptoria (subordinate collectorship) of San Francisco until the arrival of the incumbent receptor, or until you finish the business of the English bark Vancouver, on the terms explained by the accompanying instructions. Therefore you will endeavor to arrive without delay at that port, and to comply strictly with the said instructions, with the understanding that if there should be no opportunity to remit by any vessel the funds which you are about to collect, you will leave them with the person who may remain in charge of the collectorship (receptoria) when you leave it, so that he may remit them when an opportunity shall occur.
384 God and liberty. Monterey, May 16, 1846.

GUILL'O E. HARTNELL.

The correctness of the foregoing translations admitted.

Endorsed: Filed July 21, 1863.

W. H. CHEVERS, *Clerk.*

Translation of Exhibits Pinto 3 and 4 attached to deposition of Rafael Pinto, in behalf of U. S.

Translation of Exhibit Pinto No. 3, annexed to dep. of Rafael Pinto.

PINTO No. 3, (S. N.,) national service, (on the envelope.)

[Custom-house seal.] Mr. Celador Don Rafael Pinto, Monterey.

PINTO No. 4, (letter contained therein.)

MARITIME CUSTOMS OF MONTEREY.

Whereas it suits the good of the service of the department that you should take charge of the administration of the sub-collectorship (sub-receptoria) of the place of San Francisco, you will leave for that port with all possible despatch, and when you arrive at said port you will present this appointment to Don Benito Diaz, who is now in charge of said sub-collectorship and who has the order to deliver to you all the appurtenances of
385 said office, with the lawful forms and under a duplicate inventory.

When you shall have taken possession of the new port which has been conferred upon you, you will give the necessary notice to this office, and you will strictly comply with the orders and instructions which from time to time may be communicated by such office to you.

God and liberty. Monterey, 20 Aug., 1845.

JUAN B. ALVARADO.

Mr. Celador D'N RAFAEL PINTO,
Appointed receptor of the port of San Fran'co.

The correctness of the above translation admitted.

Endorsed: Filed July 21, 1864.

W. H. CHEVERS, *Clerk.*

387 *Deposition of J. Rodriguez.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 18th day of July, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Jacinto Rodriguez, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who being duly sworn, testified as follows, his evidence being interpreted by counsel by consent.

388 Present: Wm. H. Sharp, U. S. att'y, and Eugene Lies, esq., for the United States, and Sidney L. Johnson, esq., for the claimant.

Questions in behalf of the United States.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Jacinto Rodriguez; my age is fifty years; I reside in Monterey; my occupation is that of a ranchero.

2. How long have you resided in California?

Ans. From my birth.

3. Where were you in March, April, and May, 1846, and what, if any, office did you hold?

Ans. I was at Monterey, employed in the custom-house. I was a celador (inspector) and occasionally did duty as clerk in the office of the custom-house at Monterey.

4. State if you recollect whether any vessels entered their cargoes
389 at the custom-house of Monterey during those months.

Ans. I remember that during that time the brig Eufemia and the ship or barque Barnstable did enter their cargoes for payment of duties.

5. Look at a document hitherto introduced in evidence in connection with the deposition of R. C. Hopkins, consisting of four sheets of paper, marked in red ink "N. 811," "N. 812," "N. 813," and "N. 814." State its purport, the handwritings of the several entries, if you know them, and also whether you have any remembrance of the circumstances therein set down.

Ans. It is a record of the entering (aforo) of the brig Eufemia. Leaf "N. 811" contains a memorandum in my own handwriting, dated Monterey, April 22d, 1846, signed by Guillermo Edwards Hartnell, whose signature I declare is genuine. The purport of this memorandum is to establish
390 the sum of $7,977 03½ as the total of the duties payable on such cargo. Leaves "N. 812" and "N. 813" are the manifest of said brig, purporting to have been presented by the consignee, Wm. H. Davis, whose signature is at the foot. I am not well acquainted with his handwriting or signature. Leaf "N. 814" contains a list in alphabetical order of the cargo of said brig, together with a statement of the duties payable on each article and a general summing up of such duties. It is dated Monterey, April 4th, 1846, signed by Guillermo Edwardo Hartnell, whose signature I declare to be genuine. The body of said leaf "N. 814" is entirely in the handwriting of Benito Diaz. I remember, aside from the inspection of these documents, that the brig Eufemia did enter at Monterey at about the time of these dates. I recognize this record of entering the cargo of the brig Eufemia as a document belonging to the custom-house; in my opinion, it is authentic and official.

391 (Counsel for claimant objects to answer, on the ground that it is not called for by the question.)

6. Look at a document hitherto introduced in evidence in connection with the deposition of R. C. Hopkins, consisting of four sheets of paper marked in red ink "N. 725," "N. 726," "N. 727," and "N. 728." State its purport, the handwritings, if you know them, and also whether you have any remembrance of the circumstances therein set forth?

Ans. It is the record of entry (aforo) of the American ship Barnstable. Leaf "N. 725" contains a memorandum in my own handwriting, dated Monterey, May 28th, 1846, signed by Guillermo Edwardo Hartnell, who was the vista or chief subordinate officer of the custom-house, and whose signature I recognize as genuine. The purport of the memorandum is to certify the payment by Enrique Mellus, supercargo of said ship, of the sum of
392 $15,469 87½ for duties. Leaves "N. 726" and "N. 727" contain the manifest of said ship Barnstable, dated Monterey, May 8th, 1846. It purports to be signed by Enrique Mellus; I cannot swear to his signature, neither do I know the handwriting of the body of the manifest. Leaf "N. 728" contains an account in alphabetical order of the cargo of said ship Barnstable, with the amount of duties separately charged against each article. The last seven lines under the heading of Liquidacion contain the

total import duties, a statement of certain additional duties, the sum total of all the duties, and lastly, the date of "Custom-house, Monterey, May 16th, 1846." These seven lines are in my own handwriting; all the rest of said leaf is in the handwriting of Benito Diaz. The signature at the end is the genuine signature of Guillermo Edwardo Hartnell. I recollect the entry of the Barnstable, and I recollect this record of the entry as having been made at the time.

393 7. State what was the practice of the custom-house in March, April, and May, 1846, at Monterey, as to the details of entering a vessel whose cargo was liable to duties.

(Objected to as calling for parol evidence, and not the best evidence where it appears that written evidence exists. Question withdrawn.)

8. State what were the duties of a celador of the custom-house at Monterey in April and May, 1846.

(Objected to, because the duties of the officers of the custom-house were fixed by the laws and regulations of the Mexican government, and the evidence called for is not the best evidence, and is incompetent.)

Ans. The duties of a celador consisted in a general attendance upon the custom-house, and when there was a vessel to be entered, or when a passing vessel came in, as for instance, a whaler, to mount guard on board
394 and on shore. When the force was sufficient one celador would remain on board all day and two at night. Celadores generally had to obey orders of the custom-house, and to keep guard on land generally.

9. When the Barnstable entered at Monterey, in May, 1846, who were the celadores of the custom-house actually present at Monterey?

Ans. Benito Diaz, Antonio Chavis, Guillermo Hartnell, jr., and myself. I recollect none other at that time.

10. Where was Rafael Pinto at that time?

Ans. He was at the south, somewhere about Los Angeles.

11. Did the four celadores mentioned by you in your answer to ques. 9, and particularly did Benito Diaz, do duty as guards on board of the
395 Barnstable during the time when she was entering her cargo?

(Objected to as leading. Question withdrawn.)

12. State if you recollect what celadores did duty as guards, night or day, on board or on shore during the time that the Barnstable was entering her cargo in Monterey, in May, 1846, from the time she arrived there until the liquidacion of her entry?

(Objected to, because it does not appear the witness knows when the Barnstable arrived at Monterey.)

(Counsel for the U. S., in answer to last objection, states that he proposes to establish the probable date of the arrival of the Barnstable at Monterey by comparison between the date of the presentation of her manifest with the provisions of the Mexican reglamento concerning custom-houses.

Counsel for claimant persists in his objection, there being nothing
396 in the statements of counsel for the U. S. to obviate the difficulty presented by said objection.)

Ans. The same four that I mentioned before—Diaz, Chavis, Hartnell, and myself.

13. Where was Benito Diaz from the time of the entry of the Eufemia till the time when the Barnstable finished her entry?

Ans. In Monterey.

14. Do you remember whether in the months of March, April, or May, Benito Diaz received leave or orders from the custom-house at Monterey to leave that place?

(Objected to as leading and as not being the best evidence in case such orders were given or leave given.)

Ans. I have no recollection of his having any license or permission to leave Monterey, but I remember that he had orders to go to San
397 Francisco in May.

Examination in chief closed.

Cross-examination.—Questions by counsel for claimant.

Ques. 15. How long did you hold the office of celador of the custom-house of Monterey?

Ans. I don't recollect exactly. I think it was from some time in 1844—I don't remember in what month in that year—until 1846, when the Americans took Monterey.

16. What was the date of the taking of Monterey by the Americans?

Ans. On the 7th of July, 1846.

17. Were you in Monterey at that date? If not, where were you?

Ans. I was there.

18. From the time you commenced acting as celador of the custom-
398 house at Monterey until the taking of that place by the Americans did you remain constantly in Monterey or were you at any time absent from that place?

Ans. No; I was several times absent from there. Once or twice I came to San Francisco by land; once I came to San Francisco by sea, on board of a French ship, the "Leon," as custom-house guard aboard of her. Once I went to Los Angeles with the administrador of the custom-house, Don Pablo de la Guerra. I think this was in the year 1845. I may have been absent from Monterey at various other times for some days at a time with permission, but very few days at a time.

19. Do you recollect having made any other voyage by sea than the one you speak of to San Francisco on the French ship Leon?

399 Ans. I don't recollect any other. I think not.

20. On that voyage were you the only officer of the custom-house on board of that ship?

Ans. I was the only one.

21. About what time and date was it that you made this voyage?

Ans. I think it was in the year 1844. It may have been about May or June of that year.

22. Did you then remain any time in San Francisco? If so, say how long.

Ans. I remained some days with the ship at Sancelito, on the opposite side of the entrance of this bay, where vessels watered here. I cannot fix the time of my stay there more nearly.

23. When and where did you leave said French ship?

Ans. At that place, Sancelito. I returned directly back to Monterey by land.

400 24. Who had charge of the custom-house of San Francisco at that time?

Ans. I think it was Benito Diaz. I don't say it with certainty.

25. In what part of the year 1845 did you make your trip to Los Angeles?

Ans. It was somewhere about the month of August.

26. Who accompanied you on that trip?

Ans. The administrador, Don Pablo de la Guerra. I don't recollect any other.

27. How long were you absent from Monterey on that expedition?

Ans. I cannot say how long it was—some days. Two or three weeks perhaps.

28. Did you or the administrador, or both, make that journey to
401 Los Angeles on public business? State, if you know, what it was.

Ans. Yes. The administrador went there on business of the custom-house with the government. I went with him as an officer of the custom-house. On reflection, I don't know whether it was business with the government or not. It was business of the custom-house.

29. Who was then acting as governor of California?

Ans. Pio Pico.

30. How long were you in going from Monterey to Los Angeles, and how long in returning? State the number of days consumed in travelling each way.

Ans. I should think about seven days each way. We went rather rapidly. I don't recollect whether we may not have stopped a day or so in Santa Barbara.

402 31. At the time of your said visit to Los Angeles who was secretary of the government?

Ans. I don't recollect.

32. Had you yourself while there any business of a public or private nature to transact? If so, what was it, and with whom?

Ans. I don't recollect any.

33. What duties had you to perform during this journey to Los Angeles, in which you say you, as an officer (empleado) of the custom-house, accompanied the administrador of the custom house?

Ans. I don't recollect anything else than to have accompanied him as an officer (empleado) of the custom-house. I don't recollect that the administrador gave me anything to do on the trip. He may possibly have given me something to do, or something to write, but I don't recollect it.

403 34. Do you know what his business was more particularly than you have already stated it?

Ans. I can only state it by hearsay. I know that he went on the business of arranging the entry of a vessel expecting to arrive, belonging to a Mr. Parrott, or consigned to him. This is what I heard at the time.

35. How long was Benito Diaz employed as celador of the custom-house at Monterey? State from what date to what date as nearly as you can.

Ans. I cannot tell when he commenced. I think he was already celador when I began. He went out when all the rest of us did, at the taking of Monterey by the Americans.

36. I understand you to say that he was celador of the custom-house at Monterey during all the time that you held that office. Is it so?

404 (Objected to as captious, the witness having already stated that during some part of the time the witness was celador, Benito Diaz had charge of the custom-house at Yerba Buena. Counsel for claimant objects to the objection interposed by counsel for the U. S. as calculated to put the witness on his guard against the objects of the cross-examination.)

Ans. I do not mean to say that he was continually celador at Monterey during all this time. He was subject to or employed by that office, but during a part of the time he was sent to San Francisco as receptor.

37. State, then, during what part of the time Benito Diaz was at San Francisco as receptor. Give the dates as nearly as you can.

Ans. I know that he was here at San Francisco during a part of 1845. I don't know whether he was appointed as early as 1844. Up to
405 about August, 1845, he was receptor at San Francisco.

38. From the time he ceased to be receptor at San Francisco where was he and what office did he fill until the taking of Monterey by the Americans?

Ans. I don't know whether he went immediately from San Francisco to Monterey; I don't recollect; but soon after he went to Monterey, and remained there until about the middle of May, 1846, when he returned to San Francisco and staid there until some time in June, I think, when he reappeared in Monterey.

39. Can you say with certainty whether or not Benito Diaz staid constantly in Monterey during the time in which you say he held the office of celador there; that is to say, from August or September, 1845, when you say he returned there from San Francisco, until about the middle of May, 1846, when you say he left there again for San Francisco?

406 Ans. Up to the end of March, 1846. I cannot say; but from the beginning of April until the middle of May we were there occupied in the custom-house at Monterey, and I think (creo) that he did not leave Monterey.

40. From August or September, 1845, to the end of March, 1846, were you without occupation in the custom-house at Monterey? If not, why do you mention your occupations in May as reasons for believing that Benito Diaz was there all of that time?

Ans. We had occupations in those months. We had to be in attendance at the custom-house at all times to the performance of our duties there, but I don't recollect whether there any vessels with cargoes to enter in those months from August or September, 1845, to the end of March, 1846. The occupations that I spoke of in April and May, 1846, were the entries

407 of the cargoes of the two vessels, the Eufemia and the Barnstable.

Counsel for claimant asks for an adjournment until Monday next. Counsel for the U. S. objects to an adjournment at this time on the ground that it is only 4½ o'clock p. m., and insists that counsel for claimant shall proceed or rest.

The commissioner adjourns the case until Monday next, at 11½ o'clock a.m.

SAN FRANCISCO, *Cal.*, *July* 20, 1863.

Cross-examination resumed from Saturday last.

Present: All the parties.

41. Were any other vessels entered at the port of Monterey between the 1st of January, 1846, and the 1st July, 1846, than the two you have mentioned?

Ans. Don't recollect now of any others than those I have mentioned

408 that were entered at the custom-house at Monterey.

42. State whether any and what vessels were entered at the custom-house in Monterey in the year 1845.

Ans. I don't know how many, but I recollect one—the brig "Matador," either owned by or consigned to Mr. Parrott. That was my impression.

43. About what time was the entry of said brig made?

Ans. About the month of July, 1845.

44. Was it before or after the journey you say you made with the administrador to Los Angeles?

Ans. It was before, I think.

45. Can you recollect no other entry at said custom-house in 1845?

Ans. There were some others, but I can't recollect the name of any other vessel now. One had a name something like Teresa or Maria Teresa.

409 46. Were you not present during the examination of Rafael Pinto as a witness in this case, and did you not hear the deposition of said Pinto?

Ans. I was present most of the time, and heard the greater part of his deposition.

47. Had you not seen and examined the papers respecting which you have testified in this deposition within the last few days before your examination?

Ans. Yes.

48. Who showed them to you?

Ans. Mr. Eugene Lies.

49. Had you not had repeated conversations upon the matters upon which you have been examined herein with Mr. Lies, Rafael Pinto, Mr. Hinchman, and others, before your examination herein; if not with all the persons mentioned, with some them?

410 Ans. I have, since coming to San Francisco, Mr. Pinto and Mr. Lies; don't recollect having any conversation with Mr. Hinchman.

50. If you had not recently seen said papers and held the said conversations could you have recollected the entries at the custom-house at Monterey of the said vessels Eufemia and the Barnstable better, or more fully or precisely than those of any other vessels entered there while you were acting as celador?

Ans. I might have recollected that such vessels were entered, but not so exactly. From my natural memory, and seeing these papers and my own handwriting on them, I am enabled to remember them more exactly.

51. You have mentioned four persons as the ones who were acting as celadores at the custom-house at Monterey, at the time of the entries made there of the Barnstable. Who were acting as celadores of said cus-

411 tom-house at the time of the entry there of the brig Matador?

Ans. I can't say exactly; I think there were myself, Manuel Dutra, Wm. Antonio Hartnell, and Chaves.

52. Was not Rafael Gonzales acting as chief of the celadores during all the time that you were acting as celador at Monterey?

Ans. I think he was.

53. Did he not take part, as such, in the entries of the three vessels mentioned by you—the Matador, the Eufemia, and the Barnstable?

Ans. I think he did.

54. What were his duties as such chief of the celadores?

Ans. To direct and distribute the celadores, to see that they did their duty; to watch the coast, to see that no boat came ashore unobserved; to fasten down the hatches of vessels when they arrived, until they were discharged, and other duties.

412 55. Was not Joaquin de la Torre a celador at Monterey? If so, from what time to what time?

Ans. He was; don't recollect from what time to what time.

56. Was not Pamplo Soberanes also a celador there? If so, from what time to what time?

Ans. He was; I can't recollect from what time to what time.

57. Can you say whether the two last-mentioned celadores, or either of them, were acting as such during the entries of either of the three vessels, the Matador, the Eufemia, or the Barnstable?

Ans. I don't recollect; if they served at all it was in that of the Matador; they did not serve in the entries of the Eufemia or the Barnstable.

58. You have said that the seven last lines of the leaf marked in

413 red ink N. 728, are in handwriting, and all preceding those lines on that leaf, in the handwriting of Benito Diaz. Look at the date on said leaf which you say is in your own hand, and say whether that is the true date when said paper was signed, and how you know that it is the true date.

Ans. I remember having made this paper; I see the date in my own handwriting, and it must be the true date.

59. Look at a document now shown to you, the leaves of which are numbered from 719 to 724, and say what it purports to be, and what the different leaves purport to contain?

Ans. The first leaf, 719, merely expresses the title, which appears to be the entry and liquidacion of the American ship Barnstable. That is, I think, in the handwriting of Tomas Soberanes, the clerk of the custom-house. Leaves 720, 721, contain a rough draft in the handwriting of Guil-
414 lermo Edwardo Hartnell, vista of the custom-house of Monterey, of the articles composing the cargo of the Barnstable, with the duties upon them carried out, and seems to be that which was copied by Benito Diaz on leaf marked N. 728. Leaf 722 seems to contain a list of said ship's stores, and purports to be signed by Enrique Mellus, with the date of Monterey, May 8, 1846. Leaves 723, 724, seem to be a duplicate of leaves 726, 727, containing a manifest of the cargo of said vessel.

60. Look at a sheet now shown to you, the leaves of which are marked in red ink N. 710 and N. 711, and say whether you are acquainted with the handwriting and signatures found upon it; how you happen to know them, and what is the nature or character of the document.

Ans. All the body of the document on both leaves is my own handwriting except the signatures, and perhaps on the first page of the first leaf,
415 second line, the figures and words "51 vta." The signatures are all known to me, except that of Manuel Dutra, from having seen the persons whose signatures are there write and sign, and I believe them all to be genuine. The document is entitled the Salaries of the Guard, Vouchers No. 3; the first leaf is a certificate, signed by Guillermo Edwardo Hartnell as vista of the custom-house, stating the payments and referring to the accompanying nomina on the other leaf, and the other leaf is entitled nomina of the salaries paid to the officers (empleados) of the guard of this custom-house the present month, and contains nine receipts of such officers. The second one is a receipt of Benito Diaz for $232 on account of his salary as celador. The document is dated on both leaves, over the signature of Guillermo Edwardo Hartnell, Monterey, March 12, 1846.

61. Look at a sheet now shown to you, the leaves of which are
416 marked in red ink N. 708, 709, and answer the same questions with regard it.

Ans. This is a document similar to the last; it is all in my handwriting, except the signatures, which are the genuine signatures of the persons whose they purport to be, and except, also, 53 vta. in the second line of the first sheet and a part of the dates on both leaves, which dates both of April 30, 1846, seem to have been filled out in part by Guillermo Edwardo Hartnell, who signed both leaves under those dates. The first leaf is similar in title and contents to the first leaf of the other document last mentioned. The second leaf is entitled nomina of salaries due to the officers (empleado) of the guard of this custom-house, and contains six receipts of such officers or their attorneys, among which I find no receipt of Benito Diaz.

62. Examine a sheet, the leaves of which are marked N. 706, 707,
417 and answer the same question respecting it.

Ans. It is a similar document to the two last, dated, on both leaves, May 30, 1846; the body of it is in the handwriting of Guillermo Edwardo Hartnell, and both leaves signed by him. On the second leaf there are six receipts, four of which are signed, and two are not signed; the two which are not signed are made out in the names respectively of celador Don Rafael Pinto, and celador Maximo Fernandez, and the others are signed, respectively, by Jose Rafael Gonzales, myself, Jose A. Chaves, and Guillermo A. Hartnell. There is no receipt in the name of Benito Diaz. The title of the second

sheet of this paper is the same as that on that of the last, nomina of salaries due to the officers of the guard of this custom-house.

63. Look at a sheet, the leaves of which are marked N. 704, 705, and answer the same questions respecting it.

418 Ans. It is similar to the three last; the body of it is in the handwriting of Guillermo Edwardo Hartnell, both leaves signed by him under date of June 17, 1846; second leaf is entitled nomina of salaries delivered (entregados) to the officers of the guard of this custom-house; it contains five receipts, each one being for about half the monthly salary; the five receipts being signed repectively Jose Rafael Gonzales, myself, Benito Diaz, Jose A. Chaves, and Guillermo A. Hartnell.

64. How do you account for the absence of any receipt in name of, or signed by Benito Diaz, on the two nominas of the 30th April and 30th May, 1846?

Ans. I don't know what is the reason; I don't know how Benito Diaz's accounts stood with the custom-house.

Examination in chief resumed.

419 65. What opportunities have you had to become acquainted with the handwriting of Benito Diaz and Guillermo Edwardo Hartnell, and are you thoroughly acquainted with the same?

Ans. I am thoroughly acquainted with their handwriting. For years I was intimate with both of them. We were much together, and I have seen them write an infinite number of times.

66. What has become of Wm. Edward Hartnell?

Ans. He is dead.

67. Look at a bound book introduced in evidence in connection with the deposition of R. C. Hopkins. State its nature, whether you ever saw it previous to the 7th July, 1846. If so, where you saw it, who kept it, and in whose handwriting the principal parts of the entries are.

Ans. It is a book belonging to the Mexican custom-house at Mon-
420 terey, containing the accounts of its officers. I have frequently seen it previous to the 7th July, 1846, in the custom-house at Monterey; Guillermo Edwardo Hartnell kept it and had charge of it. The greater part of the entries are in his handwriting.

68. Look at leaf 11 of said book. State what it contains, and whether any of the entries, especially the last four of the accounts, recall any circumstances to your memory.

Ans. It is my account as a celador of the custom-house at Monterey. I have looked at these four items. I remember distinctly having received the money there, charged to me as proceeding from the Barnstable.

JACINTO RODRIGUEZ.

Sworn to and subscribed July 20, 1863, before me.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed July 21, 1863.

W. H. CHEVERS, *Clerk.*

421 *Deposition of H. F. Teschemacher.*

In the district court of the United States for the northern district of California.

THE UNITED STATES } In land cases.—Dis't court No. 262; land com. No. 94.
v.
ABEL STEARNS. }

Be it remembered, that on this 21st day of July, A. D. 1863, at the city of

San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared H. F. Teschemaker, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

422 Present: W. H. Sharp, U. S. att'y, and Eugene Lies, for the U. S.; and Sidney L. Johnson, for claimant.

Questions in behalf of the United States.

Question 1st. What is your name, age, and place of residence?

Ans. H. F. Teschemacher; 40 years of age; reside in San Francisco.

2d. How long have you lived in California?

Ans. About 21 or 22 years.

3d. Where were you and in what business engaged about the end of April and begining of May, 1846?

Ans. I think I was here at Yerba Buena in April. Some time in May I was in Monterey. I was clerk in the employ of Wm. Appleton & Co., of Boston, in the hide trade.

4th. How did you proceed from Yerba Buena to Monterey on that
423 occasion, and what particular business then called you?

Ans. I went as far as Santa Cruz in the bark Tasso, and thence by land to Monterey. I received instructions from the agent, Mr. Mellus, to meet the Barnstable at Monterey.

5th. Look at the back of the sheet marked in ink N. 727, and state if you know whose signature is there.

Ans. It is the signature of the said Henry Mellus. I also recognize as genuine the signature of Henry Mellus on sheets N. 722 and N. 724.

6th. State the general purport of the document of which said sheet 727 is a part.

Ans. It is the manifest of the cargo of the Barnstable, purporting to have been presented by Henry Mellus on 8th May, 1846, and also there appears at the end what is called liquidacion, dated Monterey, May 16, 1846,
424 signed by Wm. Edward Hartnell. I would add that I cannot swear that the manifest was not presented at that date, because I think I was not at Monterey; neither can I swear that the liquidacion was made and signed on the 16th May, 1846. My memory does not serve me enough to enable me to assert that the duties were paid on or before the 28th May, 1846, according to the statement of this document on the first page. I had charge of the Tasso at that time, and was not the regular clerk of the Barnstable. Both vessels were in Monterey at the same time.

7th. How long did you remain in Monterey on that occasion?

Ans. As near as I can recollect, about a fortnight.

8th. Were you acquainted with Benito Diaz?

425 Ans. I was.

9th. Do you remember seeing him at or about Monterey during the stay of the Tasso last mentioned by you?

Ans. I do not recollect. Can't say that I did or did not.

10. Do you know of the existence of any books or papers that could establish the exact date of the arrival of the Barnstable at Monterey, in 1846? If so, where are such books and papers, and could you produce the same now, or at some future time?

Ans. I do not know any at this time. Her log-book would show. It is in the possession of Wm. Appleton & Co., of Boston, if in existence. I had papers and books which would have established the date, but they were destroyed in the fire of 1850. So of the Tasso.

11. When you arrived in Monterey, in May 1846, was the cargo of
426 the Barnstable on shore or on board?

Ans. Don't recollect. I think the entry of the Barnstable was finished when I arrived at Monterey; I think it was.

Cross-examination waived.

H. F. TESCHEMACHER.

Sworn to and subscribed this 21st day of July, 1863, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed July 21, 1863.

W. H. CHEVERS, *Clerk.*

427 *Deposition of M. Z. Fernandez.*

In the district court of the United States for the northern district of California,

THE UNITED STATES *vs.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 21st day of July, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Maximo Z. Fernandez, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by counsel by consent.

428 Present: W. H. Sharp, U. S. att'y, and Eugene Lies for the U. S., and Sidney L. Johnson, esq., for the claimant.

Questions in behalf of the United States.

Question 1st. What is your name, age, place of residence and occupation?

Ans. Maximo Z. Fernandez; 36 years of age; born in Mexico; am a ranchero, and live on the rancho "San Vicente," in Santa Clara County, Cal. Have lived in California about 30 years.

2d. Where were you in the months of April and May, 1846?

Ans. In Yerba Buena.

3d. What was your business there at that time?

Ans. Celador of the custom-house, stationed at Yerba Buena.

4th. Since about what time had you been acting as such?

429 Ans. From the latter part of December, 1845.

5th. Were you the principal officer in charge of the custom-house receptoria at Yerba Buena? If not, who was or what persons were during the time that you acted there as celador?

Ans. When I came here I found Rafael Pinto as receptor; he remained here until, I think, the month of March of 1846, when he went to Monterey. I then remained alone here until Benito Diaz came here; he remained acting as receptor about two weeks; he then went away. I remained here

alone a few days, when Don Rafael Pinto returned, and I remained with him until about the middle of June, 1846. It was about the middle of May, 1846, or a little later, that Benito Diaz came here as I have stated above.

6th. What was the occasion of your leaving Yerba Buena about the middle of June, 1846?

430 Ans. I don't recollect whether I then left the custom-house or whether I returned to it. I went to San Jose about the middle of June. There was nothing to do. I was here alone.

7th. Where was Benito Diaz from 1st May, 1846, to the time when, as you state in the middle of that month, or soon after, he came to Yerba Buena?

(Question objected to, on the ground that it does not appear that the witness knows where he was, and also on the ground that it appears from the testimony of the witness already taken that about the middle of May, or soon after, Benito Diaz came from another place to the place where the witness says he was, and had been for some time previous; that the witness can only answer from hearsay.)

Ans. I do not know.

431 8th. Do you know what was the occasion of Benito Diaz going away from Yerba Buena only two weeks, as you state, after his coming up to Yerba Buena about the middle of May, 1846?

Ans. He had only come here temporarily during the absence of Rafael Pinto, who was somewhere below; also, his business here was to arrange about an English vessel that was here. He was elected to go to a convention which I think was to be held in Santa Barbara.

9th. Did you during the absence of Pinto and before the arrival of Diaz at Yerba Buena fill the duties appertaining to the receptoria at this place entirely alone?

Ans. I did. There was no other officer of the custom-house here.

Cross-examination waived.

MAXIMO Z. FERNANDEZ.

Sworn to and subscribed this 21st day of July, 1863, before me.

W. H. CHEVERS, *U. S. Com'r.*

432 Endorsed: Filed July 21st, 1863.

W. H. CHEVERS, *Clerk.*

Deposition of A. F. Hinchmann.

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 23d day of July, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared A. F. Hinchmann, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court

433 under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: W. H. Sharp, U. S. att'y, and Eugene Lies for the United States, and Sidney L. Johnson for the claimant.

Questions in behalf of the United States.

Question 1st. What is your name, age, place of residence, and occupation?

Ans. A. F. Hinchman; 39 years of age; reside in San Francisco; att'y-at-law.

2d. Do you know Pablo de la Guerra?

Ans. I do.

3d. When and where did you last see him?

Ans. At Santa Barbara, in the early part of April last.

434 4th. Had you any, and what, business with him on that occasion?

Ans. Under authority given me by Mr. Beale, U. S. sur. general of this State, of March 28, 1863, I went to demand from Pablo de la Guerra the archives of the old custom-house at Monterey, and all other public documents in his possession that should properly be in the office of the U. S. surveyor general.

5th. Did you receive from him any documents, books, and papers, purporting to be such archives of the custom-house; and if so what did you do with them?

Ans. He delivered to me a map of unbound manuscript and several bound manuscript volumes, telling me that they were the archives of the Monterey custom-house at the time when the Americans took possession of the country, 7th July, 1846; that to the best of his knowledge he had no others similar to those he delivered to me; that he might have,

435 and would continue to search for them. Upon the first page of each of the bound volumes he wrote in red ink the name Guerra, and upon each sheet of the unbound manuscript he wrote numbers in red ink, paging regularly from one on. I delivered them to U. S. sur. general.

A. F. HINCHMAN.

Sworn to and subscribed July 23, 1863, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed July 23d, 1863.

W. H. CHEVERS, *Clerk.*

436 *Affidavit and order for s'p'a duces tecum for Pablo de la Guerra.*

U. S. district court, northern district, State of California.

THE UNITED STATES } No. 262.
vs.
ABEL STEARNS. }

CITY AND COUNTY OF SAN FRANCISCO, *ss:*

Eugene Lies, being duly sworn, says that he has been employed by permission of the U. S. district attorney for the northern district of California, to defend the above case on behalf of the United States; that the testimony of Pablo de la Guerra, of Santa Barbara, has been taken in this case; that he then swore in substance that if Benito Diaz was on the 6th of May employed in the custom-house, said Benito Diaz must have been on that date in the northern part of the State; that since that time certain papers appertaining to the Mexican custom-house have been discovered in the possession of said P. de la Guerra, showing that said Benito Diaz was so employed at the date aforesaid. Deponent further says that the grant under

437 which the defendant claims has been shown to be in the handwriting of said Benito Diaz, and to be dated at Los Angeles, May 6th, 1846.

Deponent further says that when the said De la Guerra delivered the said custom-house papers he promised, as deponent is informed and believes, to make a thorough search for other books and papers appertaining to said custom-house.

Deponent further says that it is necessary and material in behalf of the United States that the said De la Guerra should be examined under oath to prove the genuineness of such paper and of such other papers as he may have discovered.

EUGENE LIES.

Subscribed and sworn before me this 25th July, 1863.

OGDEN HOFFMAN, *Dist. Judge.*

On receiving and filing the within affidavit, ordered that a subpœna be issued requiring Pablo de la Guerra, of Santa Barbara, to be and appear before W. H. Chevers, U. S. commissioner, on the 8th of August next,
438 at 11 o'clock in the forenoon of that day, to be examined as a witness on the part of the United States in the suit of the United States *vs.* Abel Stearns, and that the said De la Guerra be required to produce then and there all the books and papers appertaining to the custom-house under the Mexican government that may be in his possession.

At chambers, S. F'co, July 25, 1863.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed July 25th, 1863.

W. H. CHEVERS, *Clerk.*

439 *Deposition of P. de la Guerra.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this 3d day of August, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Pablo de la Guerra, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being taken by consent.

440 Present: W. H. Sharp, U. S. att'y, and Eugene Lies, esq., for the United States; Sidney L. Johnson, esq., for claimant.

Questions in behalf of the United States.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Pablo de la Guerra; my age is 43 years; I reside in Santa Barbara.

2. Are you the same Pablo de la Guerra whose testimony was taken in this cause on the 30th January, 1862?

Ans. I am.

3. Do you know A. F. Hinchman, of this city?

Ans. I do.

4. Where, if you know, was he in the beginning of April last?

Ans. In Santa Barbara.

441 5. Had he any, and what, particular business with you?

Ans. He had a written order from the U. S. surveyor general to demand of and receive from me some official documents that were in my possession, which I delivered to him, having first marked them with my own figures in red ink, and the bound books I put part of my name and rubric too.

6. When and where did you last see any of such documents and books?

Ans. This morning, here before the commissioner.

7. Look at document marked in red ink from "N. 725" to "N. 728;" also document marked in red ink from "N. 811" to "N. 814;" also at a bound book marked "Guerra" in red ink on the first page; also a document marked in red ink from "N. 719" to "N. 724;" also document marked in red ink "N. 708," "N. 709;" also document marked in red ink "N. 704," "N. 705;" also document marked in same way "N. 706," "N. 707;" also doc-

442 ument marked "N. 710," N. 711;" also document marked "N. 648," hitherto introduced in evidence either by stipulation or as annexed to the deposition of R. C. Hopkins, and state what you know of their history.

Ans. They are all genuine documents, belonging to the Mexican custom-house of Monterey, which I took from the archives of said office a few days before the taking of Monterey by the American forces, and I have kept them in my possession and custody until I delivered them to Mr. Hinchman by order of the surveyor general.

8. State the general nature of bound book marked "Ano de 1842," signed "Guerra," in red ink, at the bottom of the title page, being the same bound book referred to in ques. 7. Look particularly at both sides of leaf 6 of said book; state its nature. In whose handwriting, if you know, are the entries thereof?

443 (All that part of the question which asks the witness to state the nature of the book and leaf referred to objected to on the ground that the document speaks for itself and is the best evidence of its nature.)

Ans. It is a book where the private accounts of the custom-house officers were kept. Leaf 6 contains the account of Benito Diaz, who was celador of the custom-house. The handwriting of the heading is my own; the rest is in the handwriting of Wm. E. P. Hartnell, who was my chief subordinate officer in the custom-house, with the exception of two lines, in my own handwriting, in the body of the account. When this account was commenced Benito Diaz was called receptor.

9. Look at exhibits marked "Pinto No. 1" and "Pinto No. 2," now shown to you. State, if you know, in whose handwriting they are and what seals appear on both.

444 Ans. They are in the handwriting of W. E. P. Hartnell, and the seals appearing thereon, I think, are the genuine seals of the custom-house of Monterey.

10. In your examination of the 30th of January, 1862, you stated, in answer to ques. 8, that towards the end of April or beginning of May, 1846, you left Monterey for Los Angeles and returned to Monterey about the 20th or 22d of May. State now whether any person, and who, accompanied you on that journey.

Ans. Rafael Pinto and two soldiers, whose names I don't remember, accompanied. Rafael Pinto at that time was an officer of the custom-house, and I think was receptor at San Francisco.

11. State, if you remember, how many celadores were actually at Monterey in the employ of the custom-house at the time you left that place on your last-mentioned journey to Los Angeles.

445 (Objected to, on the ground that the archives of the custom-house are the best evidence.)

Ans. I don't recollect.

12. State what number of celadores were during your administration generally employed for the service of the port of Monterey.

(Objected to, on the same ground as to previous question.)

Ans. Generally four.

13. In your examination of the 30th January, 1862, ques. 10 was put to you in these terms: "Where was Benito Diaz at that time?" (meaning the time that you left Monterey for Los Angeles, in 1846,) and your answer was in these terms: "I don't remember, but if he was an officer of the custom-house he must have been in Monterey." Now state whether Benito Diaz was at the time you left Monterey for Los Angeles, in 1846, an officer of

446 the custom-house, and where he was actually at that time.

Ans. By documents which I have seen it leaves me in no doubt that he was an officer in the custom-house at that time, but where he actually was I don't remember.

14. State whether the documents and books delivered by you to Mr. Hinchman in April last were all the documents and books taken by you from Monterey a few days before the taking of Monterey by the Americans.

Ans. I think they are, as I had no others in my possession, and I did not destroy or conceal any.

15. Look at document marked "N. 649" in red ink, now shown to you, and state, if you know, the handwriting and signature and history of the paper.

447 Ans. I know the signature very well; it is the signature of Jose Antonio Carrillo. The handwriting of the body of it is familiar to me, but I cannot think just now whose it is. It is one of the papers that I delivered to Mr. Hinchman.

(Counsel for the U. S. offers the document marked "N. 649" in evidence. It is admitted by counsel for claimant to be one of the papers produced by R. C. Hopkins from the archives of the U. S. surveyor general.)

16. Look at document "N. 682" in red ink. State the history of said paper, if you know it, and the handwriting or handwritings thereof.

Ans. The paper is one of the papers delivered by me to Mr. Hinchman. The body and signature are in the handwriting of Jose A. Chavis, who was a celador of the custom-house, and the words in the margin "Se alono a cuenta 20$," are in the handwriting of Wm. E. P. Hartnell.

448 (Counsel for the U. S. offers the document marked "N. 682" in red ink in evidence. It is admitted by counsel for claimant to be one of the papers produced by R. C. Hopkins from the archives of the U. S. surveyor general.)

17. Look at document marked "N. 651" in red ink. State, if you know, the handwriting, signature, and seals.

Ans. The seals are those of the comandancia general; the handwriting is that of Francisco Arce; the signature is that of Jose Castro.

(Counsel for the U. S. offers the document marked "N. 651" in evidence, in terms and admissions as above.)

18. You have stated in this present examination that you had no doubt, from seeing certain documents, that Don Benito Diaz was employed in the custom-house at the time you left Monterey for Los Angeles in 1846.

449 Did he continue so employed afterwards, and how long?

Ans. He continued to be so employed until the taking of Monterey by the American forces.

19. Look at the leaf marked "N. 814" in red ink, and state if you know the handwritings and signatures.

Ans. The handwriting is that of Benito Diaz; the signature is that of Wm. E. P. Hartnell.

20. Look at leaf marked "N. 728" in red ink; state if you know the handwritings and signature.

Ans. The handwriting is that of Benito Diaz, except the lines from the word "Liquidacion" to the date, inclusive, which are in the handwriting of Jacinto Rodriguez; the signature is that of Wm. E. P. Hartnell.

450 *Cross-examination.—Questions by counsel for claimant.*

Ques. 21. In your answer to ques. 13 you say that by documents you have seen it leaves me in no doubt that Benito Diaz was an officer in the custom-house at that time, meaning the time you left Monterey for Los Angeles in 1846. Please state what are the documents to which you referred in that answer.

Ans. The documents to which I referred are the bound book marked "Guerra" in red ink, leaf N. 814, N. 728; Exhibits Pinto Nos. 1 and 2, and document N. 649; also "N. 705" and "N. 711."

22. Please state whether the bound books referred to by you was removed from Monterey before it was taken by the Americans, in 1846?

Ans. It was removed probably by Mr. Hartnell, as he always kept
451 that book, and may have retained it a few days to close the accounts. He and I removed the papers together.

23. When did the book pass finally from his to your possession?

Ans. I don't remember to have said that it was in his possession. It probably was in my house, and he closed up the accounts there.

24. State as nearly as you can when and where he closed the accounts referred to.

Ans. I don't know, sir, because immediately after the taking of Monterey I went to Los Angeles. He remained at Monterey.

25. Did you leave the book with him at Monterey? If not, when and where could he have had access to it for the purpose of closing the accounts.

Ans. I don't remember exactly about the book; he had access to the
452 books in my house, at Monterey, and was responsible for them as myself, being my immediate subordinate officer.

26. Within what period after the taking of Monterey by the Americans, in 1846, did Mr. Hartnell close the accounts therein? State the period of time as nearly as you can.

Ans. It must have been shortly after. I have not a very clear recollection, but I think I told him before I left for Los Angeles to settle the accounts.

27. Look at document marked "N. 706" and "N. 707," and say what it purports to be, whose the signatures on it, and whether Benito Diaz appears upon it as an empleado of the custom-house.

Ans. It contains the receipts of the custom-house guard for the month of May, 1846, including the following names: Rafael Gonzales, commandante of the celadores; Rafael Pinto, as celadore, but the receipt unsigned
453 by him; Jacinto Rodriguez, Jose A. Chaves, Guillermo A. Hartnell, and Maximo Fernandez, whose receipt is unsigned. These last were all celadores. There is no receipt in the name of Benito Diaz. Both pages are signed under date of May 30th, 1846, by Wm. E. P. Hartnell.

28. Look at document marked "N. 708" and "N. 709" in red ink, and say whether it does not contain similar receipts of the custom-house house guard for their pay to the end of March, 1846, signed under date of April 30th, 1846, on both leaves by the said W. E. P. Hartnell.

Ans. Yes.

29. State whether there is any receipt made out in the name of Benito Diaz on said last-mentioned document.

Ans. There is none.

30. Look at document marked "N. 704," "N. 705" in red ink, signed by W. E. P. Hartnell, under date of June 17th, 1846, and say whether
454 the sums thereon receipted for on account of salaries of officer of the guard were for a whole month's pay or only half a month's pay.

Ans. I think they are half month's pay.

31. If Benito Diaz was an officer of the custom-house guard at the times referred to in documents signed by W. E. P. Hartnell, under dates of April 30th and May 30th, 1846, how do you account for the omission of his name on said documents?

Ans. It was very probable that he had received his money in advance.

(Answer objected to by counsel for claimant as being merely the conjecture of the witness.)

32. Have you any certain knowledge or clear recollection upon the subject?

455 Ans. No certain knowledge or clear recollection of this particular case. I recollect that it was sometimes the case that I did advance them money, particularly to the lower officers.

33. In such case was it your practice to take a receipt for such monies in anticipation and on account of their salaries?

Ans. This was Mr. Hartnell's business as contador of the custom-house. It is my impression that he did take such receipts.

Deposition closed.

PABLO DE LA GUERRA.

Subscribed and sworn to this 3d day of August, A. D. 1863, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed August 3d, 1863.

W. H. CHEVERS, *Clerk.*

456 *Deposition of J. A. Chaves.*

In the district court of the United States for the northern district of California.

THE UNITED STATES vs. ABEL STEARNS. } In land cases.—Dist. court No. 262; land com. No. 94.

Be it remembered, that on this eighth day of August, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Jose Antonio Chaves, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evi-
457 dence being interpreted by counsel by consent.

Present: W. H. Sharp, U. S. att'y, and Eugene Lies, esq., for the U. S.; Sidney L. Johnson, esq., counsel for claimant.

Questions in behalf of the United States.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Jose Antonio Chaves; my age is forty-three years; I reside in Los Angeles County.

2. Look at document marked in red ink "N. 682," hitherto introduced in evidence in connection with the testimony of Pablo de la Guerra, and state if you know the handwriting and signature.

Ans. It is my own signature and handwriting.

3. At the time of its date, 5th May, 1846, where were you, and what was your occupation?

458 Ans. I was at Monterey, and I was a celador of the custom-house there.

4. Do you remember the names of any vessels that entered their cargoes at about the time of the date of said document?

(Objected to on the ground that it is not the best evidence, the custom-house records being in evidence and showing the names and dates of the vessels entered.)

(Question withdrawn.)

5. Look at document marked "N. 725" to "N. 728" in red ink, hitherto introduced in evidence in connection with the testimony of R. C. Hopkins; state its purport, and whether it recalls any circumstance to your mind.

(Objected to, on the ground that the document speaks for itself, and that nothing shows any occasion for refreshing the memory of the witness.)

Ans. Leaf "N. 728" is the record of the entry of the Barnstable at

459 the custom-house of Monterey. I recollect the entering of that vessel.

6. Did you, as celador, perform any duty in connection with the entry of said Barnstable?

(Objected to as leading.)

Ans. I did, both in the custom-house and on board.

7. Were you the only celador so engaged on that occasion? If not, what other persons acted as such on that occasion?

Ans. I was not the only celador on that occasion. In the entry of the Barnstable there were also acting as celadores Don Benito Diaz, Jacinto Rodriguez, and William A. Hartnell.

8. How long had Benito Diaz been in Monterey when the Barnstable arrived there?

(Objected to as leading, and because the witness has not said that

460 Benito Diaz was there when the Barnstable arrived, nor at any particular time.)

Ans. I recollect very clearly that the residence of Benito Diaz, in Monterey, had been permanent during the month of March, April, and part of May, 1846.

(Answer objected to by counsel for claimant as not responsive to the question.)

9. What were your relations with Benito Diaz, at Monterey, during his stay there in March, April, and May, 1846? Had you any intimacy with him?

(The latter part of the question objected to as leading.)

Ans. We had some friendship together, and the necessities of the service brought us together, as the few officers there were, had to relieve each other on duty.

Cross-examination.—Questions by counsel for claimant.

461 Ques. 10. In whose handwriting are the words "le abono a cuenta 20$" on the document marked "N. 682," in red ink, first shown to you in this examination?

Ans. They are in the handwriting of Wm. E. P. Hartnell, administrador for the time being of the custom-house.

11. Do you know whether or not the sum of twenty dollars was paid on account of said draft?

Ans. I learned by the payee, Don Francisco Arias, that it was paid to him.

12. Do you know when and where it was so paid to him?

Ans. I don't know the precise date, but I recollect that it was after the entry of the said ship Barnstable at Monterey, where the payment was made.

13. State, if you know, why the whole amount of said draft was not paid according to the tenor of it.

462 Ans. I don't know.

14. State, if you know, if the balance of said draft was ever paid to Don Francisco Arias.

Ans. I suppose the balance was paid, because otherwise he would have collected it from me afterwards.

15. Did you receive from the custom-house the whole amount of your pay as celador for the months of March, April, and May, 1846?

Ans. I did not. When I left the custom-house, which was a few days after the entry of the Barnstable, there remained something due to me. I don't recollect how much.

16. Fix the time of your leaving your employment as celador of the custom-house as nearly as you can.

Ans. I was present when the administrador ad interim, Don Wm. E.
463 P. Hartnell, ordered Benito Diaz to go up to Yerba Buena as receptor in place of the former receptor, who was absent. I was tired of the work we had to do, and when I found that Benito Diaz was ordered away and that we should be thus left still more shorthanded, I spoke to the commandante general, Don Jose Castro, and was by him attached to the military service. This may have been about the beginning of June. I was not entirely detached from the custom-house, but merely withdrawn from the service of the custom-house, and attached to the military service.

17. After being so attached to the military service in what capacity did you receive your pay?

Ans. I received no pay, neither as attached to the military service in which we served without pay, as a duty, nor as celador of the custom-house.

18. Look at a document now shown you, marked "N. 706," "N.
464 707," in red ink, and say whether the signature on leaf "N. 707" of "Jose A. Chaves" is your signature.

Ans. It is.

19. Examine that document and say what it purports to be.

Ans. It appears to be an account of the pay of the officers of the custom-house up to the 30th May, 1846.

20. What is the sum which you have receipted for on said document?

Ans. Fifty-eight dollars.

21. How much was your monthly pay at that time as celador of the custom-house?

Ans. That is the amount—fifty-eight dollars.

22. State whether or not that sum did not complete your pay for
465 the month of May, 1846; and if so, how do you explain your statement that when you left the custom-house there remained something due to you?

Ans. That sum did complete my pay for the month of May, 1846. I was mistaken in saying that my salary as celador for the months of March, April, and May had not been entirely paid me. I understood you to be speaking of my military service. As to the custom-house owing me something for my salary as celador, I remember the fact that after the Americans took Monterey Mr. Larkin, a merchant of that place, (the one who was consul of the U. S.,) with whom I had some accounts, demanded of me the payment of an order which I had drawn in his favor against the custom-house, alleging that they said at the custom-house nothing was due me. I procured from

Mr. Hartnell, administrator of the custom-house, a certificate that I
466 had a balance due. This satisfied Mr. Larkin, who ceased to call on me for the amount of the order.

23. State, if you can, the amount and date of the order you say you gave to Mr. Larkin on that occasion.

Ans. The amount, I think, was about forty dollars, and I must have given it to Mr. Larkin about the middle or latter part of May, 1846.

24. When you gave said order to Mr. Larkin was it for salary already due?

Ans. It was not for pay already earned but for future pay. The way we understood it was that on the entry of some vessel after that, Mr. Larkin should present and collect it.

25. Did you earn any pay as celador of the custom-house after the end of the month of May, 1846?

467 Ans. I don't recollect whether I received anything in the month of June as celador. I went away from Monterey, and if I received anything in June, it must have been after my return to Monterey.

26. When did you leave Monterey on the occasion referred to? Where did you go, and when did you return there?

Ans. It was in the early part of June that I went away with the forces under Gen'l Castro to San Jose and Santa Clara; a part of the force went on to Sonoma. I left San Jose and returned to Monterey a little after the middle or towards the end of June.

27. Did you leave the forces under Gen'l Castro and return alone? If not, in whose company did you return?

Ans. I did leave said forces and return alone.

468 28. What was the cause of your leaving said forces and returning to Monterey at that time?

Ans. It was a permission that I got from Gen'l Castro to return to get clothing.

29. Where were the forces under Gen'l Castro at the time you thus left them for Monterey?

Ans. They were at the mission of San Juan Bautista, and afterwards Gen'l Castro left them there and came himself to Monterey.

30. Did you rejoin the force under Gen'l Castro? If so, when and in what place?

Ans. Yes. Before the end of June I left Monterey and joined the forces at San Juan.

31. How many days did you remain in Monterey on that visit?

Ans. Three or four days at the most.

469 32. How long did the forces under Gen'l Castro remain at San Juan after you returned there from Monterey, and in what direction did they go when they left San Juan?

Ans. They remained there until about the eighth or ninth of July, 1846, a day or two after the taking of Monterey by the Americans, which was on the 7th of July, and they all marched in the direction of Los Angeles.

33. Look at the document now shown you, marked N. 704, N. 705, in red ink, and say whether the signature Jose A. Chaves thereupon is your genuine signature.

Ans. It is.

35. What is the amount which you appear to have received there?

Ans. Twenty-nine dollars.

36. Was that not the amount of a half month's pay, and if so, for what half month was it paid?

Ans. It is a half month's pay, and must have been for the first half
470 of June.

37. Can you recollect, or do you know whether your signature was put there on the 17th of June, 1846, or not?

Ans. I cannot recollect anything about it; I see the date, 17th June, 1846, there, but I cannot recollect whether I signed it that day or not.

38. Did you not say that after having joined the military service, you no longer received pay as celador of the custom-house?

Ans. I did not say that I did not receive any pay as celador, but that I did not receive any pay as soldier after being attached to the military service.

39. Were you with Gen'l Castro on any other expedition in the year 1846, than the one you have mentioned?

Ans. I don't recollect any other than what I have mentioned, go-
471 ing with him to Santa Clara, and afterwards going with him to Los Angeles.

40. Do you recollect an expedition of Gen'l Castro in the year 1846, made for the purpose of driving Fremont from the Gavilan.

Ans. I do.

41. When was this?

Ans. It was when all the forces were with Gen'l Castro in San Juan; I was there with him; he sent Joaquin de la Torre with a small body to make a reconaissance in the sierra of the Gavilan; it was discovered that Fremont had already gone away from there.

42. State, if you can, in what month this was.

Ans. This movement was a considerable time before the month of June; I think it was in March, about the middle of it. It lasted but a short
472 time. As soon as it was known by the detachment of Joaquin de la Torre that Fremont had gone, the forces disbanded and we returned to Monterey.

43. From your departure from Monterey till your return to it from that expedition, about how long a time intervened?

Ans. It was a very few days.

44. Were you attached to the military service on that expedition?

Ans. Yes, we went out attached to the military service.

45. Were you not at the same time in the service of the custom-house at Monterey as celador?

Ans. I was.

46. Were you the only celador of the custom-house at Monterey who went with Gen'l Castro on this expedition?

473 Ans. No, sir; Benito Diaz, Rafael Pinto, and Jacinto Rodriguez also accompanied us.

47. How many and what celadores remained behind to attend to the duties of that office at Monterey during your absence?

Ans. I am not sure whether young Hartnell went with us or not; he was a celador at that time. There were Manuel Dutra and Pamfilo Soberanes, who were celadores, but I am not certain whether they at that time were in actual service or not. There was a period when they were suspended in office on account of the complaint pending against them; they did not go with us on this expedition, so far as I can recollect. There was also Tomas Soberanes, the clerk of the custom-house, who, I think, was not on the expedition; he also may have been at that time suspended from his employment on account of a complaint pending against him.

474 48. Look at the signature of Jose A. Chaves on the document now shown you, marked N. 710, N. 711, in red ink, and say whether or not it is your genuine signature.

Ans. It is.

49. Examine said document, say what date it bears, and what sum you acknowledge thereupon to have received.

Ans. The date is March 12th, 1846, and the sum I received was two hundred and thirty-three dollars.

50. Can you say whether it was before or after having received that sum that you went on the last-mentioned expedition with Gen'l Castro to San Juan?

Ans. I think it was after that expedition, although I am not very certain.

51. For what period was that sum the pay?

475 Ans. It was the pay of four months' services; it must have been back pay.

52. Do you recollect whether the payment appearing to have been made according to the receipts on that document, (N. 710, N. 711,) were made on the occasion of the entry of any vessel at Monterey? If so, what as the vessel?

Ans. Those payments must have been made on the occasion of the entry of some vessel, as they were never made except on such occasions out of the duties. I recollect that in the month of March there arrived, not one singly but several vessels; their entries were made in that month. I recollect a Hamburg barque, called Alfred, I think; perhaps I may be mistaken in the name. There was an American barque also, the name of which I cannot recollect; another called the Don Quixote.

476 53. Why do you say that the sum of two hundred and thirty-three dollars then received by you must have been back pay?

Ans. Because in the custom-house they never gave a cent of pay in advance to anybody.

54. At the time the Barnstable was in the port of Monterey making its entry in the custom-house was there any other vessel in the port?

Ans. I don't recollect.

55. Did you go on board the Barnstable during the time she was making this entry as aforesaid?

Ans. I did, from the first day of its arrival.

67. Did you remain on board any time? If so, how long?

Ans. We relieved one another every twenty-four hours; Benito Diaz,

477 Jacinto Rodriquez, Wm. A. Hartnell, and I were the ones who relieved one another.

57. What was the day of the arrival of the Barnstable in the port of Monterey?

Ans. It is impossible, so many years after, to determine the precise day, but I think it must have been very near the beginning of May.

58. Were you the first officer of the custom-house to go aboard of the Barnstable? If not, who was?

Ans. I went on the first visit in company with the administrador and the captain of the guard. The administrador, the captain of the guard, and one of the celadores always, according to custom, first went aboard. It happened to me to accompany the others as celador on this occasion.

59. What was done on this first visit?

478 Ans. They had an interview with the captain or supercargo of the vessel, who would hand to them a manifest of the cargo, and then the officers of the custom-house would see that the hatches were fastened and sealed, and would leave the celador on board to watch and see that none of the cargo was sent on shore.

60. Do you know who presented the manifest of the cargo of the Barnstable, and whether it was presented on the occasion of the first visit you speak of?

Ans. The administrador and captain of the guard went down into the cabin with the supercargo, and I remained on deck. I did not see, and don't know, whether the manifest was presented that afternoon or not.

61. Who was the supercargo of that vessel?

479 Ans. Henry Mellus.

62. Was it customary to present the manifest on the very day of a vessel's arrival, or did they sometimes delay several days before doing so?

Ans. It was the regular custom, according to my recollection, to present the manifest the day of the vessel's arrival. It may sometimes have been given the day after, but a celador was always on guard from the very day of the vessel's arrival.

63. Say, if you can, how many days elapsed from the arrival of the Barnstable until the entry of her cargo was completed.

Ans. I think there could not have been less than fifteen or sixteen days.

64. Look at leaves N. 726, N. 727, in red ink, part of the document
480 already shown to you, porting to be the entry or aforo of the Barnstable, and say what those two leaves purport to be, and what is the date on which they purport to be signed.

Ans. It appears to be the manifest of the cargo of the Barnstable, signed by Henry Mellus, under date of the eighth of May, 1846.

65. Say, if you can, how many days, of twenty-four hours each, you kept watch on board of the Barnstable while its entry was being made?

Ans. It is impossible to say how many days I was on guard aboard of said vessel. We were three to perform this service and relieve one another; and when not on guard aboard we were on duty on shore.

66. Name the three who performed this duty on board?

Ans. Benito Diaz, Jacinto Rodriguez, and W. A. Hartnell were the three.

67. Do not these three with you make four?

481 Ans. They do. We were four, and we had three days of rest, or service, on shore, and one day in four of guard on board.

68. Looking at the date of the manifest of said vessel's cargo, say whether or not that was not the date, or about the date, of her arrival in the port.

Ans. It may have been about the date of her arrival, or it might be a few days before.

69. Did said Henry Mellus arrive on the Barnstable?

Ans. Yes.

70. Look at leaf N. 728 of said document of entry. Say what it purports to be and what its date.

Ans. It purports to be the liquidacion and aforo or entry of the cargo of the Barnstable, and it is dated May 16th, 1846.

482 71. Say what handwritings appear on that document.

Ans. The whole of the document, except the signature, is in the handwriting of Benito Diaz.

72. Did he prepare and make this liquidacion, or did he copy it from a rough draft prepared by somebody else?

Ans. He never did anything more than copy rough drafts prepared by the administrador.

73. Can you swear that Benito Diaz was not absent from Monterey at any time in April, or in the first half of the month of May, 1846?

Ans. I can.

74. What enables you to swear to his presence there during all of that time?

Ans. The reason I have already mentioned—of the vexation I felt
483 in the middle of May after this entry of the Barnstable, when Benito Diaz was ordered away, and the fact that after the end of May I no longer served in the custom-house, and our daily intimacy and relieving one another in service on guard, from the fact that Monterey was a small place where we saw one another every day. All this makes me recollect that Benito Diaz was not absent from Monterey from the beginning of March to the middle of May.

Direct examination resumed.—Questions by counsel for the U. S.

Ques. 75. Do you know Jose Andrada?

Ans. I do.

76. Where was he from the first to the middle of May, 1846?

Ans. In Monterey.

484 77. How long had he then been there?

Ans. He had not been there long; he had passed a considerable time at San Jose and Santa Clara, and, I think, about the beginning of May he came to Monterey.

78. What was the occupation of Jose Andrada?

Ans. He had no known occupations; he was a professional gambler.

79. Where was Jose Andrada from the time you joined the forces of Castro in June, 1846, up to the time of the taking of Monterey by the Americans?

Ans. He also joined the forces.

Counsel for claimant objected at the time and now states his objec-

485 tion to this resumption of the direct examination, on the ground that it was not called for or warranted by anything in the cross-examination.

Cross-examination resumed.—Questions by counsel for claimant.

Ques. 80. What is there to make you recollect the presence of Jose Andrade at Monterey in the beginning of May, 1846?

Ans. A number of circumstances make me recollect it. There was no other place of public resort than that kept by Jose Abrego in Monterey. We used all to meet there, and Jose Andrada was always there at the gaming table, and that is what makes me recollect his presence there.

Deposition closed.

JOSE A. CHAVES.

Sworn to and subscribed August 8th, 1863, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed August 8th, 1863.

W. H. CHEVERS, *Clerk.*

486 *Extract from the recorder's office, exhibit on behalf of the U. S.*

MAYO 30, A LA SUB-PREF'O.

Dirijo a V. la acta de la junta electoral q'e se celebro el dia 30 de Mayo actual en este cabuar o punto en cumplime'to del bando promulgado p'r el gob'o departam'tal el dia 13 del mismo por la cual vera V. que salio electo D. Benito Dias p'a vocal deputado de la junta g'ral, que ha de establecerse el 15 del pp. Jun'o entrante a S'ta Barbara haviendo reunido la mayoria de sufragios p'r el objeto q'e indica d'ho bando el individuo indicado. Lo que comunico a V. p'a los fines que convengan.

D. y L. Yerba B'na, Mayo 30 de 1846. J. J. NOE.

S'or Sub Pref'o D. FRAN'O GUERR'O.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, Thomas Young, county recorder in and for the city and county of San Francisco, do hereby certify that the annexed is a full, true, and correct copy of an entry of official notes of the alcalde of San Francisco, as will appear by reference to book of official notes of 1846, now in my office.

In testimony whereof, I have hereunto set my hand and affixed my
487 official seal this twenty-first day of July, A. D. 1863.

T. YOUNG, *County Recorder.*

[SEAL.] F. R. MORGAN, *Deputy.*

Endorsed: Filed November 17, 1863.

W. H. CHEVERS, *Clerk.*

Translation of extract from the recorder's office, etc., etc.

MAY 30TH.

To the sub-prefectorate:

I address to you the minute of the electoral junta which was held on the 30 of May instant, in this chief place or point, in fulfilment of the order (bando) promulgated by the departmental government the 13th day of the same, by which you will see that Don Benito Dias, deputy member of the general junta which is to be held on the 15th of June next, at Santa Barbara, the said individual having received the majority of votes for the object indicated by said order, (bando,) the which I communicate to you for the appropriate ends.

D. and L., (God and liberty.) Yerba Buena, May 30th, 1846.

J. J. NOE.

To the sub-prefect D'N FRAN'O GUERRERO.

Endorsed: Filed November 17th, 1863.

W. H. CHEVERS, *Clerk.*

488 *Opinion rejecting claim.*

United States district court, northern district of California.

THE UNITED STATES *vs.* ABEL STEARNS. } No. 262.

APRIL 23D, 1864

Claim for a lot of 600 varas at the Mission Dolores.

In support of this claim there is offered in evidence a grant by Pio Pico to one Jose Andrade, dated May 6, 1846.

There is also produced from the archives the expediente, consisting of the original petition of Andrade, dated May 4th, 1846, with a marginal order by the governor, directing the title to issue, and dated May 5th, 1846; a decree of concession dated May 6th, with the borrador of the titulo issued to the interested party.

The genuineness of the signatures of the governor and secretary to these documents is not disputed, nor is it questioned that the grant was made
before the departure of Pio Pico from California in August, 1846;
489 but it is charged that the grant is antedated, and that it in fact
was made between the 25th July and the 9th August, 1846.

The petition signed by Andrade is in the handwriting of Vicente P. Gomez; the grant is in the handwriting of Benito Diaz. Both of these witnesses have been examined on the part of the U. S.

Benito Diaz testifies that the grant is in his handwriting; that he was in the employ of the custom-house at Monterey, and at San Francisco, in the months of May and June, 1846; that he went to Los Angeles in the latter part of July or beginning of August with the forces of Castro; that he wrote the grant in Los Angeles after his arrival, but does not recollect the exact date.

Vicente Gomez testifies that the petition of Andrade is in his handwriting, but that "he entirely disremembers" the act of writing it. In
490 reply to a question whether he wrote it at its date (May 4th, 1846) he answers "surely I did." He further states that he was in Los Angeles on that day; that he went there with Gen. Castro and his forces; that Gen. Castro did not return from Los Angeles during the year 1846, but proceeded to Sonora, and that the witness accompanied him. He subsequently admits that he wrote the document at Andrade's request at Los Angeles; that Monterey had already been taken; that he heard of it at Santa Barbara on his way down, and that he was not in Los Angeles at any time during the year 1846, except when he went there with Castro and his forces.

This evidence given, with real or affected reluctance, establishes, if it be true, that the grant could not have been written at its date. The event to which Diaz refers, viz: the retreat of Castro and his forces to Los Angeles, is well known to have occurred after and in consequence of the
491 fall of Monterey. If, then, the grant was written by Diaz after Castro reached Monterey, and prior to the departure of the latter for Sonora, it must have been written between July 25th and August 9th, as charged by the U. S. But the characters of both Gomez and Diaz are unfortunately too well known to the court to permit any reliance to be placed on their unsupported testimony. The counsel of the U. S., recognizing this fact, has endeavored to corroborate their testimony by evidence both oral and documentary.

The first document produced is a carte de caja or monthly balance-sheet of the department. It is found in the archives, and bears the vista or approval of Manual Castro, prefect of the district. Its genuineness and his own signature are proved by Castro himself. This document is wholly in the handwriting of Vicente Gomez. It is dated Monterey, May 1, 1846.
492 It establishes beyond controversy that the petition of Andrade, written by Gomez, and dated Los Angeles, May 4th, could not have been written at the time and place at which it is dated.

No attempt has been made to meet the important corroboration thus afforded of Gomez's statement that he wrote the petition at Los Angeles after the taking of Monterey. The only hypothesis on which we can reconcile the fact that Gomez wrote the petition, and that he was in Monterey on the first of May, with the supposition that it was presented to the governor at Los Angeles on the fourth of May, is that Gomez wrote the petition at Monterey, falsely dated it at Los Angeles, and inserted the day of the month by anticipation. The writing, the color of the ink, and other indications show that the date was inserted at the time the remainder of the document
493 was drawn. It is unnecessary to say that the hypothesis that Gomez could have drawn the petition at Monterey, and correctly guessed the exact day when it would be presented to the governor at Los Angeles, is too extravagant to be entertained.

The U. S. have also sought to prove that neither Benito Diaz nor Andrade were at Los Angeles at the dates mentioned in the title papers. They have not, however, succeeded in obtaining the clear and indisputable evidence of an alibi which they have furnished with regard to Gomez.

That Benito Diaz was an employe of the custom-house at Monterey during the year 1846, and until the taking of that city, is abundantly proved by official documents and by oral testimony.

By the accounts of the custom-house it appears that Benito Diaz was employed as receptor from 1844 to July, 1846. His salary is credited to him during the months of April and May, and up to July 7, 1846. The
494 aforo, or statement of the cargo of the brig Euphemia is produced.

It is in the handwriting of Diaz, and dated April 4th, 1846. There is also produced a similar statement of the cargo of the ship Barnstable. It is in the handwriting of Diaz, and dated May 16, 1846. There is also produced a letter, signed by Wm. E. Hartnell, and dated May 16, 1846, appointing Diaz sub-receptor to take charge of the British barque Vancouver, then at San Francisco. This document, and the testimony of Fernandez and Rodriguez, hereafter to be noticed, affords an important corroboration of Diaz's own statement that he was at Monterey during the months of April and May, until he was ordered to San Francisco to take charge of a British vessel.

It is, of course, not impossible that Diaz may have been at Los Angeles on the 6th May and returned to Monterey by the 16th. But no motive for his absence at that time is suggested, nor do the custom records contain
495 any mention of any errand or public business on which he might have been sent. It will not be pretended that his only object was to write the grant for his friend Andrade.

The "aforo" and "liqudacion" of the cargo of the brig Barnstable, already referred to, is dated May 16th. The aforo consists of an account, in alphabetical order, of the cargo, with the amount of duties separately charged against each article. At the end of this list is the liquidacion, which contains the total import duties, a statement of certain additional duties, the sum total of all the duties, and lastly the date. The liquidacion and date are in the handwriting of Jacinto Rodriguez, but the aforo, or alphabetical list, is in the handwriting of Diaz.

It is evident that the liquidacion could not have been made until after the completion of the aforo, and that the preparation of the latter was a work requiring some time and labor. It is natural, therefore, to suppose
496 that it must have been done, or at least begun, some days before the date when Rodriguez obtained from it the amount of duties, examined and corrected it by the addition of other charges, ascertained the sum total of the duties, and presented it to the chief of the office, Mr. Hartnell, for his signature.

If this supposition be correct, the document in question affords evidence that Diaz was in Monterey several days before the 16th May, thus rendering it more improbable that he could have been in Los Angeles on the 6th.

The inference derived from the custom-house documents is corroborated by the testimony of the colleagues of Diaz.

Don Pablo de la Guerra, a gentleman of high character and unquestioned veracity, expresses the confident belief that Diaz must have been in Monterey at the end of April and beginning of May, if he was then em-
497 ployed in the custom-house. On being shown the documents which prove Diaz to have been an employe in the months of April and May, he says that from these documents he has no doubt of the fact, but he does not remember where Diaz actually was at those dates.

It appears that at the end of April or beginning of May, 1846, Don Pablo de la Guerra went himself to Los Angeles, taking with him Rafael Pinto, also an employe of the custom-house. He arrived at Los Angeles about the 7th or 8th May, remained there a few days, and returned to Monterey about the 22d. Neither at Los Angeles nor on the road going or returning did he see Diaz, Gomez, or Andrade. There was but one route usually travelled between those places at that day, and all journeys were performed on horseback. On the 8th May, Diaz, if he was in Los Angeles on the 6th, must have either been in that city or on his way back to Monterey. It is
498 very singular that neither Don Pablo or Pinto saw or heard anything of him. The presence at Los Angeles of one of his own subordinates would seem to be a circumstance that would have attached Don Pablo's at-

tention and which he would naturally remember, especially as his recollection of other incidents of his journey appears to be quite distinct.

Rafael Pinto is more positive in his statements than De la Guerra. He testifies that Dias was celador of the custom-house at Monterey at the time he, Pinto, left for Los Angeles with Don Pablo, viz: April 30th or May 1st. He produces the order from Mr. Hartnell directing Diaz to act as sub-receptor at San Francisco until his, Pinto's, return. He states emphatically that on his journey to Los Angeles he neither saw, heard, or knew of Diaz being in the lower country. The witness is unable, however, to state any cir-
499 cumstance which fixes on his memory the fact that Diaz was in Monterey when he set out for Los Angeles, except that they were both connected with the custom-house and in the daily habit of seeing each other.

Jacinto Rodriguez, also a celador of the custom-house, testifies to Diaz's handwriting on the "aforo" of the Barnstable and his own writing in the "liquidacion" appended to it. He states that the celadores actually present at Monterey when the Barnstable entered were Benito Diaz, Antonio Chavis, Wm. Hartnell, jr., and himself. Rafael Pinto had gone south, and the four did duty as inspectors of the Barnstable. He adds that he has no recollection of Diaz having obtained any leave of absence during the months of March, April, or May, 1846.

Maximo Fernandez, who was celador of the custom-house on duty at San Francisco, testifies to Diaz's arrival at that place about the middle of
500 May, as sub-receptor in place of Pinto, who had gone south.

Jose Antonio Chaves testifies that he was celador of the custom-house at the time of the entry of the Barnstable; that the other celadores engaged on that occasion were Jacinto Rodriguez, Wm. A. Hartnell, and Benito Diaz; that he recollects very clearly that the residence of Diaz in Monterey was permanent during the months of March, April, and part of May, 1846; that their relations were intimate, and the necessities of the service brought them constantly together, as there were few officers and they were obliged to relieve each other. The witness mentions a circumstance which, if true, precludes the possibility of his being mistaken as to the presence of Diaz in Monterey during the early part of May. He states that he was present when the administrador ad interim, Wm. P. Hartnell,
501 ordered Benito Diaz to go up to San Francisco in place of the former receptor, who was absent; that he was tired of the service, and when he found that Diaz was ordered away and they would be left still more shorthanded he applied to the comandante general, Don Jose Castro, and was by him attached to the military service. When asked if he can swear that Diaz was not absent from Monterey at any time in April or in the first half of May, 1846, he replies that he can, and states that he does so for the following reasons: 1, his recollection of the vexation he felt at Diaz being ordered away and that after the end of May he no longer served in the custom-house; 2, that he and Diaz were in habits of daily intercourse and relieved each other on guard, and that Monterey was a small place, where they saw one another every day.

The documents and receipts found among the custom-house papers show that this witness was allowed and received his salary as "celador"
502 up to the final dispersion of the Mexican officials in July. It is suggested that this proves his statement with regard to his leaving the custom-house and the cause of his doing so to be false. But I cannot consider the inference to be just. The witness does not say that he formally resigned his office in the custom-house. He merely says that he solicited and obtained a military appointment. It may be that the Mexican government saw fit not to discontinue the salaries of those officials who volunteered for the defence of their country at so critical a moment.

In further proof of the charge that the grant was made in July or August, after Castro's forces reached Monterey, the U. S. have called Juan N. Padilla. This witness testifies that both he and Andrade were with Castro on his march to Los Angeles ; that after their arrival Andrade
503 one day showed him some papers, the purport of which he does not exactly remember, and said that he was arranging with the governor to make him a grant for the land referred to in them, that the governor wanted information on the subject. The secretary showed him the papers, and by the diseno he was able to state it did not belong to any one.

On his cross-examination he states Andrade showed him a sort of diseno, and said that he was in treaty with Mr. Stearns for the sale of the land, and wanted to have for Mr. Stearns all possible information about it.

If the testimony of this witness be true, it is conclusive as to the date at which the grant was made. But we are not not at liberty to place entire confidence in its accuracy.

He states, it will be noticed, that he was enabled to say that the land was vacant by seeing the diseno which was shown him by the secretary of the government. But the expediente contains no diseno, and the 3d con-
504 dition of the grant requires the tract to be measured "according to the diseno which the interested party shall furnish."

It seems clear, therefore, that at the time the grant issued no diseno was presented.

His answer to ques. 23d seems to imply that Andrade's object was to obtain information for Mr Stearns, with whom he was in treaty. If this was his only object, the testimony of the witness is entirely consistent with the claimant's theory of the case.

In dealing with the testimony of many of the witnesses produced in this class of cases, it is a task at once painful and laborious to endeavor to determine to what extent, if at all, truth is mingled with falsehood in their statements. In the present instance it is possible that Andrade showed him, as he relates, "a sort of diseno," in order that he might know where the land was, but that this diseno was not in the secretary's hands, or if so,
505 was not intended to be attached to the expediente, as the regular diseno required by law. On the other hand, it is quite possible that the formation was sought for the purpose of facilitating the treaty with Mr. Stearns, and the statement that Andrade said he was arranging with the governor for a title, &c., is an accidental or wilful falsehood. I have no means of knowing which of these hypotheses is correct. I therefore reject the testimony as too uncertain to be relied on.

I have referred, I believe, to all the testimony tending to show that Benito Diaz could not have been at Los Angeles at the date of the grant.

Several witnesses swear that Andrade also was in Monterey or with Gen. Castro at the time when the petition purports to have been presented and the grant made.

As their testimony is wholly unsupported by documentary evidence, I do not consider it necessary to refer to it.

506 To rebut the evidence on the part of the U. S. the claimant has called several witnesses.

Jose Sepulveda swears that in 1846 Andrade came to him and asked for the loan of a horse to go north and take possession of some land which had been granted him, and that from the circumstance that he was then in treaty with Don Eulogio Celis for a sale of some horses to Pio Pico, he thinks this occurred in the latter part of April or beginning of May; that he lent the horse to Andrade, who went with it to Santa Barbara, but afterwards returned with the forces of Gen. Castro ; that on his return he wanted to sell the grant to the witness, but on being asked if he

had taken possession of it, replied that he had been unable to do so; that he had met some of Castro's troops on the way, and had returned with them; that he had not taken possession because all was in revolution at the north. He then said he would offer it to Don Abel Stearns, to
507 which the witness replied that it was well, as he was an American.

Assuming the general truth of this narrative, it will at once be perceived that its whole value as evidence for the claimant depends upon the date at which the occurrences took place.

The witness states that he thinks he loaned the horse to Andrade in April or the beginning of May, because he was then in treaty for a sale of horses to Pio Pico. It is at least doubtful whether Pio Pico could at that date have been collecting horses to come north. But however this may be, the fact that Andrade, after starting with the horse, met Castro's forces near Santa Margueneta and returned with them to Los Angeles seems to fix with reasonable certainty the date of the occurrence. It is known that Castro was at the North during the months of May and June. It was after the taking of Monterey, July 7th, that he fell back on Los Angeles, and meet-
508 ing Pico on the road they arrived at that city in the latter part of July.

The theory of the claimant is that Benito Diaz was able to leave Los Angeles after the 6th May, and arrive in Monterey in time to be appointed on the 16th sub-receptor at San Francisco, to which place he repaired and without obstruction entered upon the duties of his office. But Andrade about the same time, though anxious to take possession of his land, was unable to do so, because "all was in revolution at the North."

It is evident, therefore, not only that Andrade if he set out in the early part of May, would not have met the forces of General Castro within a short distance of Los Angeles, but that the state of public affairs presented at that period no obstacle to his taking possession of his land. The documents produced establish beyond doubt that at least as late as the 28th
509 May the custom-house at Monterey was collecting, in the regular and unobstructed course of its business, duties to the amount of more than $15,000 from the American ship Barnstable.

The statement of Sepulveda that Andrade told him, on his declining to purchase, that he would offer the land to Stearns seems to point to a later date than that assigned by the witness. The sale to Stearns was made on the 9th August. It is not probable that Andrade in the beginning of May could have anticipated a transaction not consumated until three months afterwards.

If to these considerations we add the statement of Sepulveda, that when Castro arrived with his forces he was engaged in branding his cattle, and that this, in 1846, was done in July or August, we are, I think, justified in concluding that if Andrade obtained from him a horse at all, it must have been later in July or the beginning of August.

510 The claimant has also produced as a witness Leonardo Cota, acting alcalde at Los Angeles, before whom the sale by Andrade to Stearns took place on the 9th August, 1846.

This witness testifies that Andrade gave to him the original grant in this case for the purpose of having endorsed upon it a deed of sale to the claimant; that the clerk who thereupon proceeded to write the deed remarked that "he could not write well on that paper, it was so dirty;" that the witness looked at it and observed that it was soiled and worn, as if from handling and carrying it in the pocket. Without dwelling on the improbability that so trivial an occurrence would be remembered after so long a time—nearly sixteen years—it is enough to say that the fact, if true, merely shows that the grant was not fabricated within a few days prior to August 9. To what degree it was soiled or crumpled we cannot know. If made

511 about the 25th July, it may well be that by the 9th of August it had become creased and dirty, especially if Andrade had it with him when, after borrowing a horse from Sepulveda, he commenced his journey to the north and returned with the troops of Castro. But in any view the circumstance mentioned by the witness, if it indeed occurred, wholly fails to show that the grant was made prior to July 7, 1846.

The last and most important witness produced by the claimant is Luis Antonio Arguello. This witness states very positively that he saw Benito Diaz in Los Angeles in the early part of May, 1846; that he applied to him for a loan of money, which he has never returned; that he received a note from Dias at the mission of San Gabriel, some eight or nine miles from Los Angeles; that he went to the pueblo immediately, gave Diaz the money, and took his note for it. On being asked to produce the letter and note,
512 the witness stated that they were among his papers at San Diego.

On a subsequent day Arguello was again examined. He produced the letter and note referred to by him, and stated that he had since his first examination been to Los Angeles and sent by an Indian vaquero a letter to his brother, requesting him to send him two bundles of papers; that his brother did so, and among them he found the letter and note of Diaz. On cross-examination he admitted that since his return from Los Angeles he had been to Monterey, where he saw his cousin Benito Diaz.

The letter and note are undoubtedly in the handwriting of Diaz. They are dated at Los Angeles, the letter on the 4th and the note on the 5th May, 1846. To rebut this evidence the U. S. have produced an expert, who testifies that he detects certain differences between the handwriting
513 of Dias in the letter and note and his handwriting in the grant, showing that the latter must have been written time a considerable time before the former. It may be that to the eye of an expert these differences are discernible, and they may even justify the opinion he expresses, but I confess myself unable to detect them, or rather to discover any greater differences than constantly occur in the handwriting of individuals within very brief intervals of time.

It is also suggested that Arguello may have procured Diaz to write the letter and note when he saw him at Monterey. This hypothesis seems not entirely consistent with the fact that Dias is a witness for the U. S., and swears directly to the antedating of the grant; it is, nevertheless, possible. It is no very extravagant supposition that Dias after fulfilling his obligations to those interested to defeat the grant may have been willing to do
514 a corresponding service to the opposite side. The paper on which the letter and note are written bears every mark of antiquity, but this circumstance is not conclusive; both are written upon half sheets; half sheets of old letters could no doubt be easily obtained.

It appears from the custom-house documents that on the 12th March, 1846, Benito Dias receipted for $232. The receipts of the celadores on the 30th April and 30th May are produced, but there appears no receipt of Dias on either of those days. On the 17th June is a receipt bearing his signature.

It is argued that the absence of any receipt by Dias on the 30th of April and 30th May is a circumstance to prove that he could not then have been in Monterey. It appears from the account books of the custom-house that at the end of December, 1845, Benito Diaz had been overpaid $209, which is charged against him. His salary, $58 33 per month, for January and
515 February is duly credited to him. In March he is charged with $232, the amount covered by his receipt, and he is credited with $58 33⅓ for his salary for March. It thus appears that at the end of March

he had been overpaid $266. This may account for the fact that no payments were made to Dias, and consequently no receipts given by him on the 30th April or the 30th May. That his salary was not stopped by reason of any absence from duty appears by the credits allowed him in the accounts for the months of April and May.

Various other suggestions have been made on either side in support of their theories with regard to the true date of the grant.

On the part of the claimants it is shown that when the military governor of California directed Col. Stephenson to make inquiries as to the fraudulent and antedated grants which Pio Pico was notoriously known to have
516 made on the eve of his departure for Mexico, the most important and explicit information was furnished by Abel Stearns. But this fact at most shows that Stearns was not aware that his own grant was antedated, a circumstance quite consistent with the theory of the U. S. On the part of the U. S. it is urged that at the pretended date of the grant Castro and Pico were on terms of great hostility, and that the latter would not have made a grant to an adherent of the former. But Andrade seems to have been a very obscure, if not worthless, personage, and it is very doubtful whether Pico's animosity to Castro would have prevented his giving to a simple soldier in the forces of the latter a small lot supposed to possess little value.

It appears from the archives that on the 8th May, 1846, no less than 45 expedientes were sent into the departmental assembly; that of An-
517 drade is not among the number. If his grant had been made on the 6th it is not easy to account for its omission.

The foregoing review of the evidence presents one more illustration of the difficulty of arriving at any certain conclusion as to the facts in this class of cases. On any supposition, several witnesses must have testified falsely. It has appeared to me that the weight of evidence, both oral and documentary, is on the side of the U. S.

The custom-house documents show that Gomez was in Monterey on the 1st May. He could not, therefore, have been in Los Angeles to write a petition which was presented on the 4th May. They show that Diaz was certainly in Monterey on the 16th May, and they justify the almost certain inferrence that he was there some days previously. If he made the grant at Los Angeles on the 6th, he could by hard riding barely have accomplished
518 the journey. No motive for such haste is suggested, nor any object for his journey to Los Angeles, when his official duties required his presence in Monterey. Pablo de la Guerra, an entirely reliable witness, is ignorant that Dias was absent from Monterey at the period in question. If he had been, the fact could hardly have escaped his notice; for about the same time he took with him Pinto, another of the celadores, thus diminishing by one more the force on duty. If Diaz was in Los Angeles on the 6th, and in Monterey at least as early as the 16th, it is very difficult to account for the fact that neither Don Pablo de la Guerra nor Pinto, who reached Los Angeles on the 7th or 8th, saw or heard of him in that city or met him on the road.

The inference suggested by this testimony is abundantly corroborated by the parol proofs from other and less reliable sources.

519 Benito Diaz and Vicente Gomez both admit that they were not in Los Angeles at the date of the grant. The calleagues of Dias testify in the most positive terms to his presence in Monterey during the early part of May, and some of them detail circumstances which give an air of probability to their narrative.

Several witnesses testify positively that Andrade was in Monterey during the same period, and finally it is shown beyond doubt that the parties,

Andrade, Gomez, and Dias, were at Los Angeles at the end of July and beginning of August, when, as the United States charge, the grant was in fact made.

To all this the claimants oppose only the testimony of Sepulveda, of Cota, of Arguello, and the fact, as disclosed by the custom-house accounts, that no payments were made to Dias on the 30th April and 30th May.

The force and effect of Sepulveda and Cota's testimony has already
520 been sufficiently considered. The evidence of the latter is inconclusive; while that of the former when closely examined seems to justify an inference adverse to the claimant. If Arguello's testimony be true, it is clear that Dias was in Los Angeles on the 4th and 6th of May. I have felt unable, on the strength of this evidence alone and of documents which may have been fabricated, to reject the conclusion to which all the other testimony in the case points.

On the whole, my opinion is that it appears by a preponderance of proofs that the petition and grant in this case could not have been prepared at Los Angeles on the days at which they are dated, by the persons in whose handwriting they are, but that they were made at a period subsequent to the capture of Monterey and fraudulently antedated.

But even if my conclusion on this point be erroneous, there are other
521 and formidable objections to the grant.

The petition is dated May 4th. The marginal order directing the grant to issue is dated May 5th, and the decree of concession on the same day. The grant is dated May 6th. No informes are asked for or furnished. No diseno is presented with the petition, nor does the latter come through the prefect, as required by the order of both Alvarado and Pico. Under these circumstances, which indicate so much haste and neglect of the preliminary steps required by law to be observed in the granting of lands, it is very doubtful whether under the decisions of the Supreme Court a grant like this, made so near the time when the Mexican authority was subverted, and which was neither preceded or followed by any occupation of the land, or founded on any antecedent equities or merits of the grantee, could be confirmed. U. S. *vs.* Cambuston, How. R.; U. S. *vs.* Fuentes, 22 How., 460; U. S. *vs.* Pico, 23 How., 321; U. S. *vs.* Castro, 24 How., 348; U. S. *vs.* Knight's Adm'r, 1 Black, 227.

522 The claim was rejected by the board on the ground of indefiniteness of boundaries.

In his petition to the board the claimant asks for the confirmation of his title to "a tract of land situated in front of the mission building of San Francisco de Assis or Dolores, and containing 600 varas square, measuring from and including the huerta or garden of said mission beyond the tanyard of the same or until the quantity of 600 varas be completed."

Andrade, in his petition to the governor, solicits a piece of land in front of the ex-mission of San Francisco, where the orchard (huerta) used to be, "the trees of which no longer exist, which land may have an extent of six hundred varas, as far as the tannery."

The decree of concession grants "600 varas of cultivatable land in the ex-
mission of San Francisco, lying in front of the establishment of the
523 same, which cultivatable land is the same on which formerly existed an orchard of fruit trees, and which extends as far as the tannery."

The borrador of the grant found in the expediente describes the land as "600 varas square in front of the mission of San Francisco de Asis, embracing from the orchard as far as the tannery."

The 3d condition describes the land of which donations is made, as 600 varas square, and the same which has heretofore been occupied by the mission as an orchard, which extended as far as the tannery.

The borrador as originally written described the land as tract or orchard situated in San Francisco, which that establishment formerly occupied as an orchard of fruit trees.

This description has been erased and an interlineation made in the handwriting of Dias, describing the lands as extending from the orchard to the tannery.

524 It will be seen that by the latter description the orchard is excluded from the grant, while by the former it is included.

It will also be observed that while making this interlineation in the first part of the iitulo, the corresponding correction in the language of the 3d condition was neglected.

That condition, as we have seen, describes the land "as the same which was formerly occupied by the mission as an orchard, which extended as far as the tannery."

The description in the first part of the titulo exactly follows that interlined. But the 3d condition describes the land as "that formerly occupied by the mission as an orchard of fruit trees and the tannery."

We have thus three inconsistent descriptions of the tract. The tract described in the decree of concession is "the orchard as far as the tan-

525 nery." That described in the first part of the borrador is a tract from the orchard as far as the tannery, while the 3d condition grants "the orchard, which extended as far as the tannery."

The titulo in its first part adopts the description, which excludes both orchard and tannery, "from the orchard until passing the tannery," while the 3d condition grants the tract "occupied by the mission as an orchard of fruit trees and a tannery."

It is difficult to decide which of these descriptions should govern. If that contained in the recitals of the titulo and borrador be followed both the orchard and tannery will be excluded. If we adopt that contained in the decree of concession and the 3d condition of the borrador, the orchard will be included and the tannery excluded, and if we follow the description contained in the 3d condition of the titulo, both orchard and tannery will be included in the grant.

526 The claimant in his petition to the board asks for the orchard, but not the tannery.

His counsel in his argument in this court appears to consider that neither orchard or tannery should be included. He even adverts to the fact that the borrador was corrected so as to leave out the orchard, as indicating a circumspection natural if the grant was made in the beginning of May, but unaccountable if fraudulently and recklessly made in August.

The observation has undoubtedly some force, but it is strange that the corresponding correction was not made in the 3d condition of the borrador, while the 3d condition of the titulo goes even further than the borrador, and includes the tannery.

Under any construction of the grant its location is uncertain. It is testified by experts that an almost indefinite number of squares of 600 varas might be formed all answering equally well to the calls of the grant.

527 Whether this uncertainty is so great as of itself to furnish sufficient reason for rejecting the claim, it is not necessary to determine. I have thought it proper, however, to allude to the difficulty, first of deciding which description shall govern, and secondly, of locating the land under the description adopted by the counsel.

It may be observed, in addition, that under any location it will embrace land occupied by ancient Californians, at the alleged date of the grant, who have presented their claims for confirmation, and it will even include a portion of the land patented to Bishop Alemany as the property of the Roman

Catholic church. On the whole, my opinion is that the claim is invalid, and ought to be rejected.

Endorsed: Filed April 23d, 1864.

W. H. CHEVERS, *Clerk.*

528 *Decree rejecting claim.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 25th day of April, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ABEL STEARNS. } No. 262.

This cause came on to be heard on the appeal of the claimants from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California under the act of Congress approved March 3, 1851, upon the transcript of the proceedings and decision of said board, and upon the further evidence in this court, taken by order of the court; and it appearing to the court that the said transcript was
529 duly filed according to law: Now, therefore, the cause having been regularly brought to a hearing, counsel for the respective parties present and heard, and due deliberation had in the premises, it is ordered, adjudged, and decreed that there is no error in the decree of the said board, and that the said decree be, and the same hereby is, affirmed. And it is further ordered, adjudged, and decreed that the claim of the said Abel Stearns is invalid; that the same be, and hereby is, rejected, and that the petition of said claimant for a confirmation be, and the same hereby is, dismissed.

OGDEN HOFFMAN, *U. S. Dist. Judge.*

Endorsed: Filed April 25th, 1864.

W. H. CHEVERS, *Clerk.*

530 *Order granting appeal.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 31st day of May, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ABEL STEARNS. } No. 262.

In this case, on the application of Sidney L. Johnson, esq., attorney for claimant, made in open court, it is ordered by the court that an appeal in behalf of the claimant from the final decision of this court, rendered in said cause at the present term, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed May 31st, 1864.

W. H. CHEVERS, *Clerk.*

531 I, W. H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify the annexed and foregoing five hundred and thirty (530) consecutively numbered pages exhibit a full, true, and correct transcript of the record of proceedings before the late board of United States land commissioners, as the same is on file in my office, and of the papers, evidence, pleadings, orders, opinions, and decrees now on file in my office, in the case of the United States *vs.* Abel Stearns, No. 262.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court this first day of November, A. D. 1864, and of our independence the eighty-ninth.

W. H. CHEVERS, *Clerk.*

Filed February 1, 1865.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 59.

THE UNITED STATES, APPELLANT,

vs.

ABM. G. STEARNS.

APPEAL FROM CHEROKEE AND DELAWARE.

SUPREME COURT OF THE UNITED STATES.

No. 39.

THE UNITED STATES, APPELLANT

vs.

ABEL G. STEARNS.

WRIT OF CETIORARI AND RETURN.

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1 THE UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the Judges of the District Court of the United States for the northern district of California, greeting:

Whereas, in a certain suit in the said District Court, between Abel Stearns, appellant, and the United States, respondents, which said suit was removed to the Supreme Court of the United States, by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

1st. A grant made by Pio Pico, on the 1st day of August, A. D. 1846, to John Warner, for land called Camajal, containing four square leagues.

2nd. A grant was made by Pio Pico, on the 6th day of August, A. D. 1846, to Julio Cretaine, for the privilege of exporting asphaltum for six (6) years.

2 3rd. Several grants, unnecessary to describe, made by Pio Pico, and dated in July, A. D. 1846.

4th. The photograph of Pio Pico's signature to grant in this case, to Andrade, 6th May, 1846.

5th. The photograph of Pio Pico's signature to the grant to John Roland and Louis Arenos, on the same day, the 6th of May, A. D. 1846, and also signature on the 5th, to marginal order.

6th. The photograph of Pio Pico's signature, on the 4th of May, A. D. 1846, to marginal order, on petition of Thomas Talmante for a for a denunciation.

7th. The photograph of Pio Pico's signature to a marginal order, on the petition of Juan de Dios, of the 8th of May, 1846.

8th. The photograph of the signature of Pio Pico to the marginal order, on the petition of Julio Cretaine for export of asphaltum, dated 6th August, A. D. 1846.

9th. The photograph of the signature of Pio Pico to the decree of concession to John Warner, of place called Camajal, dated August, 1846.

10th. The photograph of the signature of Pio Pico to the grant to Warner, of Camajal, dated August 1st, 1846.

3 11th. A letter from Don Pablo de la Guena to Hartwell, dated May 5th, 1846, stating that the ship Barnstable had passed Santa Barbara three or four days before.

12th. The manifest of the Barnstable furnished by Henry Mellus, the consignee to the custom-house, signed by him, and dated May 8th, 1846.

13th. Afuso or statement of duties on the cargo of the ship Barnstable, in the handwriting of Hartwell, showing that the work was done by Hartwell, and that all Diaz appears to have done was to put the statement in alphabetical order, which is the work of only a few hours, and overcomes the conclusion of the district judge, that Diaz must have been in Monterey several days before the 16th May preparing the work.

14th. A letter from Jose Abrejo, the treasurer of the department, addressed to the governor, dated Monterey, June 9th, 1846, giving notice to the governor of the forwarding therewith of the "Corte de Coja" of the 1st May and 1st June.

15th. Letter from Treasurer Abrejo to the governor, dated January 1, 1846, transmitting the accounts for the 1st respectively of
4 each of the months of November and December, 1845, and January, 1846.

16th. Letter from Treasurer Abrejo to the governor, dated February 16th, 1846, transmitting accounts for the month of January up to the 1st of February.

17th. The original draft of the "Corte de Coja" of May 1st, 1846, spoken of by Judge Hoffman in his opinion, and found in the archive book, vol. 2, of departmental payment, at page 384.

18th. All the other various papers and pieces of evidence which are mentioned and discussed, in the opinion of Judge Hoffman, and which are not contained in the transcript of the record, and which were doubtless omitted from the fact that such papers from the Spanish and Mexican archives are not allowed to be left in the clerk's office of the District Court, and oftentimes are not brought in at all, but only referred to, it being the practice, which has grown up in California land cases, for the judge to visit the archive office after the case is submitted, and examine the documents put in evidence, and also to examine any other documents and make evidence of them to guide him in his determination of the case.

19th. A transcript from Hartwell's index, to show that the
5 grant is regularly entered on that index and numbered 552.

You therefore are hereby commanded that searching the records and proceedings, in said cause, you certify what omissions

and errors you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 1st Monday of December, A. D. 1866.

[SEAL.] D. W. MIDDLETON,
Clerk Supreme Court U. States.

Issued 4th May, 1867.

The return to this writ appears by certain photographs, and documents hereto annexed.

OGDEN HOFFMAN,
U. S. District Judge, for California.

October 11th, 1867, San Francisco.

Endorsed: Supreme Court U. S., 1866. December term, No. 162. Abel Stearns, cl'm't and appellant, *vs.* The United States. Writ of Certiorari.

6 Receptor D. Benito Diaz, con $7 00, quedo satisfecho hasta fino de mizo, 1844.

$58	33⅓	Por el sueldo de un mes hasta fide Abril.	
		Por $58 entragados en dinero	$58 00
		Por $58 en dinero el dia 11 de Mayo	50 00
58	33⅓	Por el sueldo del mes de Mayo.	
58	33⅓	Por el sueldo del mes de Junio.	
58	33⅓	Por el sueldo del mes de Julio.	
58	33⅓	Por el sueldo del mes de Agosto.	
		Por $47 que tenio en San Francisco	47 00
		Por $68 pagados al Sir Castanares	68 00
		Por $10 para el bayle de 16 de Sep. del año pasado	10 00
		Por $58 separados para 'el aqui	58 00
		Por $10 recibio de D. Pablo en Octubre	10 00
233	33⅓	Por el sueldo de Sep , Oct., Nov. y Dec.	
$325	00		$301 00
$224	00	Saldo hasta 31 de Dec'r de 1844.	
233	33⅓	Por sueldo hasta el fin de Abril de 1845.	
		Tomado por el en S. Fran'co	$69 00
		Saldo	388 33⅓
$457	33⅓		$457 33⅓
$388	33⅓	Saldo que alcanza a fin de Abril, 1845.	
58	33⅓	Sueldo del mes de Mayo.	
175	00	Idem de Junio, Julio y Agosto.	
233	33⅓	Idem de Sept. hasta Dec'r inclusive.	

	Por $525 que recebi en Mayo 31	525 00
	Por $58 en D'bro	58 00
	Por $112 a Mellus y 116 a Castanares	228 00
	Por $175 en S. Francisco y $78 a D. Pablo	253 00
		$1,064 00
7	Saldo que debre a firo de Debr., 1845	209 00
116 66⅔	Por su sueldo de Enevo y Felaro.	
	Por $232 entregados en Mayo, de 1846	232 00
58 33⅓	Por el sueldo de Marzo.	
116 66⅔	Por el sueldo de Abril y Mayo.	
	Por $29 que recebro' en Junio	29 00
71 94	Por sus sueldos hasta y d Julio.	
8	*Celador Don Antonio Chaves, 1° de Sept.*, 1845.	
$116 66⅔	Por el sueldo de los meses, de Sep. y Octo.	
	Por an payare fba, 8 de Nov're	$116 66⅔
116 66⅔	Por el sueldo, de Nov'r y Dec'r.	
	Por 29 en plata, y 37 en la cumesaone	116
$233 33⅓		$232 66⅔
00 66⅔	Saldoa su fava a finas de De'be, 1845.	
	Por $116 entuyados en Mayo, 1846	116
175	Por su sueldo hasta el fin, de Mazo.	
	Por $59 66⅔ entuyados en Alul	59 66⅔
116 66⅔	Por sus sueldos de Alul y Mayo.	
	Por $58 per la Barnstable	58
	Por $29 en Junio	29
71 94	Por sus sueldos hasta 7 de Julio.	

9 *Nominas de sueldos payados a los emplendos del Rusyuardo de esta Aduana el presento mes.*

Commandante de celadores, Don Rafel Gonzales, a buond cuenta de sus nenciomuntos $450 00

Gonzales:

Celador Don Benito Deaz ći cason lá de los sagro 232 00

Benito Diaz:

Don Jacento Rodriguez de igual clase en los mismos terminos 310 00

Jacinto Rodrigaes:

Don Antonio Chaves, id., id., id 233 00

José A. Chaves.

on Guellenno A. Hartwell, id., id..... 210 00
Gue. Mr. Au'l Hartwell.

Jon Manuel Datra, id per sus vencementos hasta el dico ultimed de dhe delano passado enque ciso..... 344 53⅓
Man'l Datra.

Don Baefelco Saluvarus de igual clase acuenta de cus halures entigado a Dn. Tunas Larkin..... 30 00
Panfelo Sobuaies.

10 Receptos de San Fran'co Don Rafael Parto a cuenta de sas habanes entugado, a la apolerado D. José Abuejo..... 119 00
José Abuejo.

Celador de la receptorio de S. Fran'co, Don Maximo Faneandez, ente degados a su apederado Don José Ahego, a cunita de sas ha heres..... 58 00

$1,986 53⅓

Montueg, May 12th, 1846.

HARTWELL.

11 Extract from journals of departmental assembly, May 8th 1846:

"En segaida se dio cuenta con cuaenta y cusco espediastes relatuosa concescuores de trenos par el gobineo departmental a dinersos particulares se mandarm pasar to dos a la connsino de terrenos valdios."

Counsel on both sides agree that the aforo of the brig Euphenia is as represented in the judge's opinion.

[Here follows map.]

SUPREME COURT OF THE UNITED STATES.

UNITED STATES OF AMERICA,
District of California, ss :

I, George E. Whitney, clerk of the Circuit Court of the United States for the district of California, and ex-officio clerk of the District Court of the United States in and for said district, do hereby certify and return, that in obedience to a writ of certiorari issued out of the Supreme Court of the United States, at the December term, A. D. 1866, and dated the 4th day of May, 1867, in the case of Abel Stearns, appellant, and the United States, respondent, I have caused the annexed photographs of documents and papers belonging to the Spanish and Mexican archives, in the State of California, and also copies of certain papers annexed to the said writ of certiorari, to be prepared; and I do hereby certify that said photographs are true and correct representations of the original documents on file in said archives, and said copies are full, true, and correct copies of the originals, also on file, and are the same which are mentioned and described in the said writ of certiorari, to which this return is annexed; that this certificate, together with the annexed photographs, and the documents annexed to the said writ in the answer of the judge of the District Court of the district of California, to the said writ.

Witness, the seal of said District Court, hereto attached, and also affixed to each of said photographs, and to each of said documents, this 11th day of October, A. D. 1867.

GEO. E. WHITNEY, *Clerk*.

OGDEN HOFFMAN,
U. S. District Judge for California.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

December Term, 1867.

The United States,

RESPONDENT,

vs.

Abel Stearns,

APPELLANT.

Notes of Argument for the Appellant.

SAN FRANCISCO:
M. D. Carr & Co, Printers, 411 Clay Street.
1867.

IN THE

Supreme Court of the United States.

THE UNITED STATES,
Respondent,
vs.
ABEL STEARNS,
Appellant.

NOTES OF ARGUMENT ON BEHALF OF APPELLANT.

This case differs altogether in its facts from the case of the U. S. v. Knight, Administrator. 1 Black., 248.

In that case there was no Grant; here the Grant is undisputed.

There, "Evidence to show that the Grant was recorded is entirely wanting." (See p. 249 of Opinion.) Here the evidence of its registration is shown on the Grant itself over the signature of the Secretary of State.

(See note of registry, Photographs, p. 15, at top of page.)

There it was held (p. 255) that the burden was upon the claimant, to show that the Grant issued, and to show its existence and loss, before he could be allowed to give secondary evidence of its contents.

Here we have the Grant in all due form, properly executed by Governor and Secretary of State, duly issued, duly registered, and still in existence among the archives.

There the weight of evidence was against the probability that the Governor would bestow such a bounty upon one so recently in arms against him. (See p. 251 of Opinion.)

Here the bounty was bestowed on a Mexican citizen, a soldier in the Governor's own cause, a poor man, and the bounty was a small piece of land, of no value whatever at the time of the Grant. (See Opinion.)

There the weight of evidence against the theory that Knight was in Los Angeles at the date of the Grant was overwhelming. Here the weight of evidence against the probability that Diaz and Gomez were in Los Angeles at the date of this Grant is, even under Judge Hoffman's views, extremely slight and doubtful.

Here also was the occupation and cultivation by Leidsdorff, who held under Stearns. (See testimony of Mellus.)

The Judge, after summing up, says: "On the whole, my opinion is, that it appears by a preponderance of proof that the Petition and Grant in this case could not have been prepared at Los Angeles on the days at which they are dated," &c.

The very language evinces a hesitating and reluctant conclusion, in addition to which we will be able to show many points of evidence which were probably not brought to the notice of Judge Hoffman, and which will remove the principal reliance of his argument against the date of the claim.

II.

The theory of the Government is, as stated in Judge Hoffman's Opinion, that the Grant to Andrade was made between the 25th July and the 9th August, 1846, and was antedated the 4th May. The purpose was to defraud the United States, and deprive that Government of the benefit of the rule which some years afterwards was adopted by its Courts, to the effect that no Grant should be confirmed which was made after the 7th July, 1846, the day when Monterey was captured, for the second time in its history, by an American man-of-war.

The statement of the whole proposition carries its inconclusiveness upon its face. We would like to say

"its absurdity," but refrain, out of the respect we entertain for those who have seriously argued it.

In order to have had the assigned motive in August, 1846, for antedating a Grant so as to get before the 7th day of July of that year, the Mexican authorities of California must have foreseen:

1. That in the war between Mexico and the United States, the latter would be successful.

2. That one of the terms of any treaty of peace would be the cession of California.

3. That the Courts of the United States would adopt the arbitrary rule that no Grant should be held valid if made after the capture of Monterey, of any lands in the ceded Territory.

To have preconceived these facts at that early day would have been most extraordinary. The news of the battle of Palo Alto and Resaca de la Palma, the opening events of the war, could hardly have reached California, which was then almost "terra incognita," without means of communication with the Capital except by horseback over the mountain trails for 2000 miles.

Monterey had but a few years before been taken in the same way, and no such consequences followed.

Besides, at that particular period, there was no portion of the lands of California of sufficient value to pro-

voke a resort to frauds and forgeries for its acquisition. The land throughout this department was an object of but small consideration, and was granted to citizens and foreigners freely and without stint. The idea that the entry in one port of a man-of-war, with hostile designs, should have so appreciated the value of the property in the minds of those who had grown gray in the experience and observation of its almost utter worthlessness, and that within the period of one month, will certainly not be entertained, or resorted to by any fair mind for the purpose of defeating a private right of property, which otherwise appears to be valid and indubitable.

The fact is well known here, (in California,) and particularly in Washington, that five or six years after this perod, indeed long after the cession of California to the United States, a system of manufacturing papers was commenced by some of the then late Mexican officials, but it is not going too far to say, that sooner or later, in every case, were these attempts detected; nor is there a single case to be found of fraudulent antedating as early as 1846, nor do we believe earlier than 1851.

On the other hand we know that Gov. Pico, continued to make grants without any antedating. There was the Grant to his relative Francisco Pico, made and dated the 20th July, 1846, and although confirmed upon all points by the District Court, yet it was rejected by the

Supreme Court, upon the ground that it was made after the capture of Monterey.

See U. S. v. Pico, 23 How. 321.

Now, if there had been any suspicion in the mind of Gov. Pico that safety required a Grant to be dated before the American occupation, he would surely have antedated in favor of his relative, if he would have done such a thing at all.

The Photograph volume represents, at pages 19 and 22, a Grant by Pico to Don Juan Warner, dated August 1st, 1846.

Page 23 shows a Grant of Pico to Cretaine, dated August 6, 1846, granting the important monopoly for the exportation of asphaltum.

Pages 27 and 30 show a Grant of Pico to Fitch & Guerero, dated July 24, 1846. Guerero was a man of intelligence, and had held important offices under the Government.

Page 31 shows the Certificate of Approval of the last named Grant by the Departmental Assembly, and is dated July 30, 1846.

Many more of the same dates might be presented, but these are enough to show that no suspicion, and consequently no fear of the American doctrine as to Grants, which was announced twelve years afterwards,

ever entered into the mind of either Gov. Pico or of the Legislature.

In reference to the suspicion and rumor of Grants being antedated at that early period, we will show that they originated out of the alteration in the dates of several Grants made about that time, and the ignorance of the early American settlers, who did not understand the reason for such alterations.

We present in the Book of Photographs, at pages 69–70–71–72, the Expediente in the case of Antonio F. Coronel. At page 70, it will be seen that the date of the "informe" is altered from July 3, to June 3, 1846, while the date at the bottom of the petition, same page, remains "July 3."

On the next page, 71, the date of the Officer's Report is altered from "July" to "June." All these alterations are so palpable to the naked eye, so unconcealed, that the idea of any fraudulent intent is utterly repugnant. It cannot be said that they had any reference to the capture of Monterey on the 7th July, because all the dates are anterior to that day. Mr. Hopkins, the Keeper of the Archives, whose familiarity with Mexican events is undisputed, says that the reason of the alteration, both in this and the other succeeding cases to which we will call attention, was that Gov. Pico was not in Los Angeles at the first

written date, and it was therefore altered to a period when he was there—that the change occurs frequently in the Archive documents, and is always so bold that there is no reason for suspicion of an attempt to deceive—that they were made with reference to the fact that Pico left Los Angeles about the 16th June, 1846, and did not return until late in July.

See Note to page 72, Photographs.

See also Hopkins' affidavit, annexed to Photograph Book, in which he states that the facts stated in these Notes are true.

The next case we have photographed, is tne Expediente in the case of Daniel Hill, occupying pages 73 to 78, inclusive. The petition (page 76,) was dated 27th June, and "June" was afterwards altered to May. The Grant was dated (page 78,) June 10th, after an erasure of June 27th, and an erasure of "Santa Barbara," for which "Los Angeles" was substituted. The same remarks apply to this as in the Coronel case, and yet these cases were put in evidence by the Government to show that Pico was guilty of alterations to defraud the United States, at that early day, and, as a consequence, that the Andrade Grant was antedated.

As strong corroborative proof of the true date having been affixed to this Grant, we call attention to page 26 of Photographs, in which is exhibited the signatures of Pio Pico.

The first six were made early in May, and the remaining three in August.

Nos. 2 and 3 are his signatures in this case, the 6th of May.

No. 1 his signature in the Roland case, made the same day.

It is evident that these three signatures were made at the same time, with the same pen, the same ink, and the same nervous condition of the writer. Indeed, the resemblance in all respects is so exact that it would be strange if they were not made at one sitting. There is no pretence in the Roland case of antedating.

No. 4 was made on the 4th of May.

No. 5 about the same time.

No. 6 on the 8th of May.

There can be no pretence that either of these last three were antedated. They belong to unfinished papers, of no value whatever, and under which no claims are made. They all show the close resemblance of the signatures at that date, and particularly of the rubric and flourishes.

The other three, made early in August, exhibit material differences—a heavier hand, a different pen, a darker ink—and an observable change is also distinctly manifested in the rubrics and flourishes.

The whole document of No. 8 is shown at pages 19 and 22 of Photographs.

The whole document of No. 7 is exhibited on page 23 of Photographs.

The inference from this comparison is irresistible, and we can assert, without fear of denial, that no other signatures of Pico which can be found in the archives, can be produced to weaken this conclusion.

III.

In reviewing the testimony on the part of the Gov. ernment, Judge Hoffman remarks, as to the two chief witnesses, Vicente Gomez and Benito Diaz:

"But the characters of both Gomez and Diaz are unfortunately too well known to the Court to permit any reliance to be placed on their unsupported testimony. The counsel of the United States, recognizing this fact, has endeavored to corroborate their testimony by evidence, both oral and documentary."

We will first take up for consideration the documentary evidence which is supposed to corroborate Gomez and Diaz, and having shown that no such consequences can be derived from it, we will easily dispose of the oral support which is afforded by the other hired and perjured witnesses. So, that if we wipe out the evi-

dence on which Judge Hoffman would refuse to place any reliance, we will be able to demonstrate that there is no testimony to support the theory of the Government.

The first document relied on is a Corte de Caja, a monthly balance sheet of the department, which bears the Vista or approval of Manual Castro.

The photograph of the first and last pages of the original will be found in photograph return to certiorari, on pages 39 and 42.

Because it was dated the 1st May, and is in the handwriting of Gomez, Judge Hoffman says: "It establishes beyond controversy that the petition of Andrade, &c., written by Gomez, and dated Los Angeles, May 4th, could not have been written at the time and place at which it is dated."

To us it seems strange that any such serious consequence should be given to the mere date of a Government fiscal account, which must be dated by rule as of the time which the receipts and expenditures cover, without regard to the particular time it was made out.

But we will not enlarge upon this, because we have positive proof to rebut the Judge's conclusion.

1. We show on page 38 of Photograph return the letter of Treasurer Abrego, transmitting this very ac-

count to the Governor. His letter is dated the 9th of June, and he transmits two accounts—the one for the month up to the 1st May, and the other for the month up to the 1st June.

We also show further, on page 34 of Photograph return, a similar letter, dated the 1st January, 1846, transmitting three accounts: those for the 1st November, 1st December, and 1st January.

On page 35 of Photographs is another letter of Abrego, dated February 16th, and transmitting the account for the 1st February.

Now these, we think, establish the fact that at least under the Mexican system in California, of dating and transmitting these accounts, the date is always the 1st of the month by rule, and is therefore utterly unreliable to prove any fact as to the time of other occurrences.

We prove further, that this document, "Corte de Caja," of the 1st May, was not transmitted until the 9th June, and might have been written or (as we shall show hereafter,) copied by Gomez on that very day. Certainly the presumption fairly arises that the accounts were transmitted as soon as made, and therefore that this one was not made out before the 9th of June

It appears from these letters of Treasurer Abrego that sometimes three accounts were sent at the same

time, sometimes two, sometimes one; the letter on page 35 Photographs shows but one, and that sent sixteen days after its date, and this makes the inference all the stronger that they were transmitted as soon as they were made up.

But we go farther, and still prove more about this particular paper, to which so much potency has been given.

On pages 43 and 46 of Photographs we present the "borrador," or original draft of this "Corte de Caja." This is not in the writing of Gomez; it has no date, but shows by its caption that it is the account for the month of April.

This establishes that the real work of making up this account was done by another hand, and not by Gomez; that it was only copied by Gomez, and that doubtless about or shortly before the 9th of June, when it was transmitted to the Governor.

So much for that corroboration, which it is proper to say, we believe, would have had no place in the opinion of the District Judge, if his attention had been properly called to all the papers.

The next document in order is the "Aforo y liquidacion" of the cargo of the brig Barnstable, dated May 16th, and consists of an account, in alphabetical order, of the cargo and the amount of duties separately charged

against each article, and at the end of it is the "liquidacion" which contains the total import duties, a statement of certain additional duties, the sum total of all the duties, and lastly the date.

The, liquidacion, and date are in the handwriting of Jacinto Rodrigues; but the aforo, or alphabetical list, is in the handwriting of Diaz. For this document, see pages 54, 55 and 58 of photographs.

Judge Hoffman thinks that as the "aforo" must have been made before the "liquidacion," and that the preparation of it was a work requiring some time and labor; therefore, it affords evidence that Diaz was in Monterey several days before the 16th May, and rendering it more improbable that he could have been in Los Angeles on the 6th.

To rebut this presumption, we present, on pages 59, 62, 63 and 63, of photographs, the "borrador," or original first draft of the "aforo" of the brig Barnstable. It is shown to be in the handwriting of Wm. E. Hartnell. It proves that all the labor which was necessary was done by Hartnell—that the task of Diaz was to arrange alphabetically and copy, and this, as any one can see, and as Mr. Hopkins states in his note, could have been performed in a few hours. He may have performed this on the 16th; there can be no inference that he did it a day sooner. If we are forced to rely

upon dates of fiscal papers, then we are entitled fairly to say that the date of the paper fixes the day on which this slight work was done, and must so stand until it is disproved. The "liquidacion," in the handwriting of Rodrigues, is only a few minutes' work.

In further support of our views, we adopt one of the researches made by Judge Hoffman in another place.

He says in his opinion: "The documents produced establish beyond doubt that at least as late as the 28th May, the Custom House at Monterey was collecting in the regular and unobstructed course of its business, duties to the amount of more than $18,000 from the American ship Barnstable."

Now, as the collections were not made until the 28th May, it must have been because the accounts were not ready—no other reason could be properly assigned—and it would follow that the "aforo y liquidacion" was not completed until about the 28th, although dated on the 16th.

This concludes all the documentary evidence on the part of the Government, and there is nothing in any of them which tends to prove in any degree that Diaz or Gomez, or both, were not in Los Angeles on the 6th May, 1846.

We will pass hastily over the oral corroborations:

1. The testimony of Don Pablo de la Guerra. We do not see how any point can be made on his evidence He expressly states his want of recollection. Sometimes an impression is forced from him which is no evidence. His examination was sixteen years after the events sought to be explained, and he says that his business was of magnitude, and he did not pay much attention to anything else.

2. The testimony of Rafael Pinto is simply that he did not meet Diaz on his way to Los Angeles. This, like the same of Don Pablo, amounts to nothing. Diaz may not have been traveling at the same time; or if so, he may have been stopping at neighboring haciendas for refreshments or sleep. A material weakness in this testimony is, that the witness should speak so positively after a lapse of so many years, about a circumstance which was of utter inconsequence and inapt to leave any impression on the memory.

3. The last remark may be also applied to the evidence of Jacinto Rodrigues and José Antonio Chavis, who say that Diaz and others were the Celadores at the arrival of the Barnstable. Doubtless they were, but it does not follow that Diaz was present at that day, or before the 16th of May, when he copied the "aforo;" nor do we think that rights can be affected by relying

on the recollection of witnesses who testify to a few days' difference of time as to the presence of a familiar face, extending back so many years. And as to the last witness, he is only saved from direct conviction of falsehood by the presumption indulged by Judge Hoffman, that although the witness swears he had resigned as Celador, yet that the Mexican Government might not have seen fit to discontinue the salaries of those officials who volunteered for the defence of their country. A most violent presumption, and one which we think does not relieve the witness from the imputation of direct falsehood.

4. Juan M. Padilla. Judge Hoffman saves us the trouble of reviewing the testimony of this witness. After a long review of it he remarks: "In dealing with the testimony of many of the witnesses produced in this class of cases, it is a task at once painful and laborious to endeavor to determine to what extent, if at all, truth is mingled with falsehood."

Again: "I have no means of knowing which of these hypotheses is correct. I therefore reject the testimony as too uncertain to be relied on."

And after reviewing the whole of the testimony, the Judge remarks: "The foregoing review of the evidence presents one more illustration of the difficulty of arriv-

ing at any certain conclusion as to the facts in this class of cases."

We humbly suggest, in answer to this remark, that there are some prominent facts which are "certain" and undisputed.

The Petition of Andrade.

The Decree of Concession.

The Borrador of the Titulo.

The Entry of Registration.

The Grant delivered.

The Expediente in the Archives and indexed by Hartnell.

The genuineness of all which is admitted. In support of all this, we have the positive testimony of Pico and Moreno, that the Grant was made at the time it bears date, and the corroborative proof, by Photograph, p. 26, of the similarity of Pico's signature at this date to other signatures undisputed as to date, to which we have already referred.

Now, although suspicion has been heretofore cast upon the reputation for veracity of Pico and Moreno, yet it is going too far to reject their evidence on all occasions and for every purpose. In this case they have not been assailed. Their testimony is not in favor of one of

their own countrymen, but on behalf of an American citizen—one of their conquerors. There is nothing improbable in the facts to which they testify. We insist, that the rules of evidence demand that weight should be given to their testimony, especially when the corroborations are as ample as we hold they are here.

The attack made upon the date is the litigated point, and the only thing which presents difficulty in the mind of the Judge in arriving at any certain conclusion as to the facts, and although "the attack" is the thing which winds up in uncertainty, yet by the judgment, "the attack" which is a failure, is made to overthrow and defeat the things which are certain, and positive, and admitted.

We submit that the logic of the opinion is defective.

It is very evident that the case for the Government was made up of perjured testimony and hired witnesses. That Judge Hoffman himself puts no faith in them; and would have utterly repudiated their evidence, but for assistance of the documentary evidence which we have reviewed and explained, and which misled Judge Hoffman, for the want of having brought to his notice other preceding documents which prove that his inferences are incorrect.

We now turn to the evidence for the claimant, and take up the oral testimony first.

1. That of Jose Sepulveda, which is made to turn against the claim by an ingenious argument, is of no moment, because it only refers to the date of loaning a horse to the grantee, and having a conversation, and after the long lapse of time, nothing certain could possibly be predicated upon the recollection of such trifling events.

2. Leonardo Cota, proves that he was the witness to the deed from Andrade to Stearns, which was written on the original Grant. That the paper was soiled and worn, as if from carrying it in the pocket. This testimony is corroborated by the Photographs of the paper (p. 18 of Potographs) which exhibits that at the time of its execution, the paper had become so worn and creased that the grantor in signing was evidently forced to straddle the crease with his two names, leaving a space between them, which would not otherwise occur. Also the blurring which is seen in the rubric of the witness, where there is no fold or crease in the paper, proves it to have been very much worn.

3. The evidence of Luis Antonio Arguello is important, and we think conclusive. The witness is a relative of Benito Diaz, and in favor of an American, could hardly be induced to fabricate the facts to which he testifies, and by so doing throw discredit upon his kinsman. The character of one of the facts is the best

of all things to impress the memory—he loaned his cousin money, and it had never been repaid.

He states, that he received a note from Diaz, at the Mission of San Gabriel, 8 or 9 miles from Los Angeles, applying for a loan of money; that he went to the Pueblo immediately, gave Diaz the money, and took his note for it.

Upon his first examination, on being asked for these papers, he stated they were among his papers at San Diego.

Upon a second examination, after he had had time to send for and obtain the papers, he produced them. They are decided by Judge Hoffman to be both in the handwriting of Diaz—the letter dated the 4th, and the promissory note the 5th May, 1846—and establishes conclusively that Diaz was in Los Angeles at the date of the Grant to Andrade.

The other side endeavors to throw suspicion upon this testimony, because the witness, upon his second examination, admitted, that since he had arrived this time from the South he had been to Monterey, and had seen his cousin Benito Diaz. And the inference desired to be drawn is, that they had fabricated these papers.

The peculiarity of the circumstances—the fact that if the witness had intended to swear falsely, he need

not have mentioned anything about letter or note, or he might have alleged their positive loss; that two months after his first examination he appears again and brings the papers; the ease with which he could have been contradicted by Diaz, who came up from Monterey with him, and was here at the time, convenient again to be called by the Government; the neglect of the Government to recall him—all these things prohibit the suspicion that there was any fabrication on the part of this witness.

If it was a plan that this witness was to get Diaz to manufacture these papers, he would certainly have had them made before his first examination, and would not have risked the refusal of Diaz to make them; or if he did have them fabricated before his first examination, and did not then produce them, so that their after-production would appear more impressive, then very certainly he would not have gone to Monterey; he would not have been seen with Diaz, nor traveled in company with him to San Francisco; his own instincts would have taught him, (had he thus been a scoundrel,) that association with Diaz would throw suspicion upon his testimony, and afford help to his detection.

But there is really nothing which can reflect upon the testimony of this witness. The bold attempt to do so by the use of one expert, was a complete failure, and so evidently considered by Judge Hoffman.

4. The testimony of Pico and Moreno, which are positive and unhesitating as to the date of the Grant and the time of its execution, ought surely to outweigh that of witnesses stamped by the Judge with discredit—whose testimony is confused, contradictory and uncertain, or who testify to trivial events, at a distance of many years, and who are not corroborated by a single piece of documentary evidence, nor by any assignable motive for the theory which they have been brought forward to establish. Will not the Court bear in mind that Gomez, Diaz, Castro, Covarubias, Padilla, and others who have been suborned in this case, are the very witnesses who have heretofore been relied on by claimants in nearly every fraudulent and manufactured claim which has been presented and rejected? And that their perjury has been established, and unmincingly declared in repeated judicial opinions? And is it any wonder that men who have again and again been hired to swear in favor of claims which had no Expedientes, could easily be obtained to swear for the overthrow of a claim where the Expediente was full and adequate, found in the archives, properly registered, properly indexed, and admitted to be genuine; and that too, when the claim is in favor of an American citizen, and not one of their own countrymen?

POINT IV.

Judge Hoffman makes an objection to the effect that on the 8th of May, 45 Expedientes were sent to the Departmental Assembly, and that if this Grant was made on the 6th, it is not easy to account for its omission.

We think the easiest in the world. The fact that 45 Expedientes were sent in at one time, proves that Expedientes were not sent in immediately as they were made, no more than that Land Office Certificates of the United States, are forwarded the same day the land is bought. Every office has its regular form of doing business. It is likely that the package of 45 Expedientes sent in on the 8th, had been made up for that purpose, probably for several days ; and it is extremely likely that the Assembly was not to be troubled with that sort of business, except periodically when the number of Expedientes had accumulated to a degree which required and justified the attention of the legislature being taken up with it.

Nor without this explanation does the omission to send this one into the Assembly, prove anything whatever, nor should it originate any suspicion of its fairness. It is well known here, and doubtless to the Supreme Court Judges, that there are a considerable

number of important grants made at different periods, about the authenticity of which there was no dispute, and in regard to which there was no contest by the Government, which did not receive the approval of the Assembly, because they were not sent in to it. It only goes to prove that in a rude and half-civilized frontier department, there was a want of uniform regularity in doing the public business, and that omissions, errors and deficiencies of all sorts, are not only not to be wondered at and criticised, but are to be expected and overlooked with that spirit of fairness and liberality which is alike the token, and characteristic of the educated and intelligent.

V.

The opinion of Judge Hoffman lays some stress upon the uncertainty of the description, and shows some differences between the Decree of Concession and the third condition of the Grant on the one part, and the borrador of the Grant and the titulo on the other. The difference is, that the one would include the orchard while the others would exclude it. It seems to us, that when it is considered that the Grant was of a trifling piece of land, which would naturally not call into play the exercise of any very great care, the objection ought not to be seriously considered. The only question which can properly be asked, is whether the point raised

is capable of solution. We suppose, as a matter of course, that the borridor and titulo, which agree in this respect would be bound to govern, and that consequently the land granted was "from the orchard" and not including the orchard. Nor, do we conceive that the similar erroneous description in the third ~~consideration~~ condition of the title can effect the construction we suggest, for it is also a familiar rule, that conditions in a Grant which are repugnant or contradictory to the Grant, must fall.

We must also advert to the fact, that the description was purposely altered in the borridor, so as to leave out the orchard. This alteration suggests two observations.

1. It shows the intention to be clear that the orchard should be left out, for the alteration is *pro ne rata* an affirmative expression of this design.

2. It tends to show that the Grant was made in May, and was not a fraud, else why alter it so as to leave out the most valuable portion? The usual recklessness of a fraudulent attempt at acquisition would not have exhibited the signs of an unnecessary moderation.

The description then comes to this: A small tract of land (about 60 acres) is granted to be measured from the public domain in a square form; the locality is distinct and well known; the point of beginning, or rather

the first line of the boundary is given, to wit: "from the orchard;" the direction of the survey from that first line is given, to wit: towards the tannery. Can anything be clearer, or is anything more necessary in such a Grant. The diminutive size of the tract would hardly induce one to anticipate finding any natural boundaries or prominent land marks, either to furnish a complete description or to enable a diseno to be made which would furnish any information, or afford certainty to every intent.

This question of uncertainty of location was raised in the case of the U. S. v. Fremont, 17 Howard R., and was urged ~~with force and vigor~~ by Mr. Cushing, then Attorney General, and there the Court held: "The right to so much land to be afterwards laid off by official authority in the territory described, passed from the Government to him by the Execution of the instrument granting it."

A stronger case than this cannot be found to answer the objections to uncertainty of boundary, and this case, we believe, has never been overruled.

VI.

We now beg to suggest, in answer to some of Judge Hoffman's objections:

1. That in Grants of these small pieces of land, it

was not common to use the same particularity as in large colonizing Grants. It was therefore generally omitted to ask an "informe" or to present a "diseno."

2. It is not a valid criticism that the petition did not come through the prefect; the orders to that effect were made "in order that the public business of the department may be translated with the most prompt despatch."

See Transcript, p. 53.

It was not obligatory either upon the petitioner or the Governor, and if the latter chose to allow a mere business regulation, established by himself, to be dispensed with or suspended, it ought not to be a matter of complaint with any one.

3. The remark that there were no "antecedent equities or merits of the grantor," is entirely uncalled for, and would seem to be a hostile remark inadvertently made, and tending to prejudice the claim without any just reason. The evidence shows that Andrade was a Mexican citizen, and as such was entitled to the common favor of receiving a Grant of land from his Government. What he asked for was so modest, that the mere fact of being a citizen invested him with all the equities and merits which were essential. To all others who applied, whether natives or foreigners, land was

granted by leagues—and with no higher equities or merits than Andrade.

And finally, there is no indication of haste, nor any neglect of the preliminary steps required by law, when we properly regard the inferior nature of the subject of the Grant. The only wonder is, that a matter of such consideration should be found surrounded with so many muniments of regularity and order.

John D. Fleeton
C. Cushing
J. M. Carlisle.

In the Supreme Court of the United States.

DECEMBER TERM, 1866.

ABEL STEARNS
vs.
THE UNITED STATES. } No. 162.

Statement and Argument for the United States.

The questions involved in this case are mainly questions of fact.

They are so fully and elaborately considered in the opinion of the court below, which rejected the claim, as to forbid the necessity of any re-examination of the case by counsel.

The United States therefore adopt and rely upon the opinion of the court below as their argument to sustain the decree of the court.

HENRY STANBERRY,
Attorney General.

JOHN A. WILLS,
Special Counsel.

United States Supreme Court.

ABEL STEARNS, Appellant,

VERSUS

THE UNITED STATES, Respondent.

BRIEF FOR RESPONDENT.

GEO. H. WILLIAMS,
COUNSEL FOR RESPONDENT.

McGILL & WITHEROW, Printers, Washington, D. C.

Supreme Court of the United States.

ABEL STEARNS, APPELLANT,

vs.

THE UNITED STATES, RESPONDENT.

BRIEF FOR RESPONDENT.

There are two questions in this case, one of fact, and the other of law.

The appellant affirms that the original grant, from Pio Pico, Governor of California, to Jose Andrade, under which he claims, was made in Los Angeles, on the 6th day of May, 1846, the date written upon it. The respondent affirms that the said grant was made at some time subsequent to the 7th of July of said year.

That makes the issue of fact. If the grant was made after the 7th of July, A. D. 1846, it is void. U. S. *vs.* Pico, 23 Howard, 321.

To prove that the grant is correctly dated, appellant produces the deposition of the following-named witnesses: Pio Pico, J. M. Moreno, L. Costa, J. T. Serreno, L. A. Arguello. All the other evidence of appellant is rebutting, or relates to a description of the property.

Pico and Moreno are Spanish officials who made the grant. They say it was made when it bears date. They are parties to the fraud, if any was committed.

They are not entitled to credit—

1. Because they refer to nothing which fixes the date in their memories. They say that the grant was made on the 6th of May, because they see that date upon the face of the paper.

2. Because they were in the habit, in July and August of 1846, of making grants with false dates. Page 61.

Their testimony has been found to be false as to other grants to which they were parties. Page 3.

L. Costa is called to prove how the paper on which the grant to Andrade was written appeared on the 9th of August, the date of the transfer by Andrade to Appellant Stearns. This transfer was endorsed on the grant; and L. Costa says that the clerk who was writing the transfer remarked that the paper was dirty; and witness saw that it was soiled and worn, as if from handling and carrying in the pocket. As to this testimony, it may be remarked—

1. To remember a circumstance so trifling for sixteen years indicates an extraordinary memory.

2. The paper may have been more or less soiled when the grant to Andrade was written upon it.

3. The paper may have been carried in Andrade's pocket from some time in July till the 9th of August, and so became dirty and worn.

The inference is very feeble that, because the paper was dirty on the 9th of August, a grant written thereon was made on the 6th of May. Page 67.

Serreno testifies that Andrade was in Los Angeles in the latter part of April or the beginning of May; that he came to witness for a horse to go north to take possession of a grant of land he had there; that Andrade, after going as far as Santa Barbara, returned with the troops of General Castro, saying that he could not take possession of his land, because he met the troops of General Castro, and "all was revolution in the north."

As to this testimony, it may be remarked—

1. The conversation between witness and Andrade about the horse and land, if it occurred at all, could not have occurred at the date given, because there was no revolution in the north prior to June, for the Barnstable was entered at San Francisco as late as the 28th of May, and the custom-house continued its operations at Monterey till the 7th of July.

Castro's forces fell back towards Los Angeles after the fall of Monterey, which was on the 7th of July, so that if Andrade met them at Santa Margarita, as he says, he must have met them some time after that date. Witness says he was marking his cattle in July and August of 1846, when Castro's forces arrived in Los Angeles.

Witness further says that Andrade, upon his return, talked to him about selling the land to Stearns, so that it is probable the return was out long before the transfer to Stearns, on the 9th of August.

Pico, it seems, was procuring horses to go north to join Castro, and it is possible that Andrade obtained a horse from witness for that purpose, and after his return Andrade talked to witness about his land, the sale to Stearns, &c., and the witness has mixed up and confounded the two conversations: but be that fact as it may, all the other facts detailed by the witness show that the first conversation was as late as July. Page 70.

L. A. Arguello is the witness upon whom appellant places his chief reliance. He testifies that he saw Benito Diaz at Los Angeles early in May, 1846, and produces two papers, a letter, and a note, dated, respectively, May 4 and 5, which he says passed between him and Diaz, at Los Angeles, at the time they bear date.

This deposition bears the ear-marks of perjury. Witness, it seems, resides in San Diego, and left home in June; was first examined August 28th, and re-examined in November.

Ample time was thus afforded for witness and his two relatives, Stearns and Diaz, to work up his evidence. This witness is oblivious of everything except that he saw Diaz at Los Angeles early in May, 1846. It was ingenious to forget all other events that transpired about that time, for in that way he could avoid detection and contradiction.

He says that he remembers the time, because he remembers his money, which he never got back.

It is a little strange that this note for sixty dollars should have remained unpaid for sixteen years, and that a letter of so little consequence should have been so carefully preserved for all that time. He states, in his first examination, that the note and letter are among his papers at San Diego, if they had not been "lost or mislaid," yet afterwards, in his second examination, he says he sent an Indian from Los Angeles to San Diego for the papers.

It seems, after his arrival at Los Angeles, he knew that the papers were not "lost or mislaid," but exactly where they could be found. Why did he stop at Los Angeles, and send an Indian, instead of going himself for the papers? He knew their importance. He evidently started to go after them, and then took the chances of their being found and brought to him by the Indian. This story about sending for the papers is no doubt a fabrication. They were made by witness and Diaz, at Monterey, after his return from Los Angelos. Evidence of this fact is found in the testimony of B. R. Nisbet, page 93.

There may have been at some time a transaction between

witness and Diaz like the one stated, which suggested the testimony on the first examination, and the dates were then made to fit this case. It is noticeable that Diaz, though present, was not called, nor was any other person, to corroborate this witness in any respect, though appellant must have known that the truth of the evidence would be disputed.

Two or three leading facts are to be kept constantly and clearly in view, in comparing and weighing the evidence in this case.

1. Monterey fell into the hands of the Americans on the 7th of July, 1846.

2. General Castro's forces, retiring after the fall of Monterey, entered Los Angeles in the latter part of said month of July.

3. That Andrade, the grantee, Gomez who wrote the petition, and Diaz, who wrote the grant, were soldiers under General Castro, and were with him in Los Angeles, in the latter part of July.

4. That if they were in Los Angeles on the 6th of May, 1846, they were there temporarily, and without any known purpose, and that their residence, at that date, was at or near Monterey.

These facts cannot be controverted upon the evidence in this case.

That Andrade was not in Los Angeles on the 6th of May, 1846, appears—

1. From the testimony of Ambrosio Gomez, who says expressly that Andrade was in Monterey at the time, and details the particulars of his subsequent departure with the troops. Page 33.

2. From the testimony of Eugenie Montenegro, who states that Andrade was at Monterey for a month or two before he joined the forces under General Castro, which was some time in May. Page 38.

3. From the testimony of Publo de la Guerra, who states that he was in Los Angeles early in May, and did not see or hear of Andrade, but shows with considerable certainty that he was at other times about Monterey. Page 57.

4. The testimony of J. N. Padilla, who states that he and

Andrade went to Los Angeles with the forces of General Castro, after the fall of Monterey; that Andrade then told him that he was arranging with the Governor to obtain a grant of land, and wanted witness to assist him; and witness did go before the officials and make statements for that purpose. Andrade also at that time spoke to witness about his negotiation with Stearns. Witness was not in Los Angeles at any other time in 1846, and his evidence bears the impress of truth. Page 64.

5. From the testimony of Jose Antonis Chaves, who swears that Andrade was in Monterey from the first to the middle of May, 1846. Page 132.

That Vicente Gomez was not in Los Angeles on the 6th of May, 1846, appears—

1. From his own testimony; for although he states that Andrade's petition, in his handwriting, was correctly dated, yet he swears that it was written after he entered Los Angeles with General Castro, and that he was in Los Angeles at no other time during the year 1846. Page 18.

2. From the testimony of R. C. Hopkins, who produces from the Spanish archives a monthly balance sheet, dated Monterey, May 1, 1840, in the handwriting of said Vicente Gomez, and approved by Manuel Castro. Page 25.

No question is made as to the genuineness of this document, and, if it be true that he was in Monterey on the 1st, it was physically impossible for him to be in Los Angeles on the 4th of May, the ostensible date of the petition, for it took at that time seven days of rapid travel to make the trip. Pages 111 and 118.

3. From the testimony of Ambrosio Gomez, who testifies positively and clearly that his brother Vincente was in Monterey on the 1st of May, 1846. Page 34.

4. From the testimony of Manuel Castro, who was prefect May 1, 1846, and as such approved the said balance-sheet written by V. Gomez, and who stated that this Gomez was at that time clerk in the treasurer's office at Monterey. Page 37.

5. From the testimony of E. Montenegro, who states that

V. Gomez, in company with witness, were with the Mexican forces when they marched against Fremont, in May, 1846. Page 38.

6. From the testimony of De La Guerra, who says that he saw V. Gomez around Monterey in 1846, and supposed his residence was there. Page 59.

That Benito Diaz was not in Los Angeles on the 6th of May, 1846, appears—

1. From his testimony, in which he swears that he was not there at that date. Page 16.

2. From the testimony of De La Guerra, who swears that he left Monterey for Los Angeles in the latter part of April or the fore part of May, 1846, and that at that time Diaz was an officer in the custom-house, and was at Monterey. He was at Los Angeles early in May, but heard nothing of Diaz there. Page 59.

3. From the testimony of R. C. Hopkins, who produces a book in which were kept the salaries of the officers of the custom-house, from which it appears that Diaz was credited with his salary for the months of April and May, 1846, and charged with twenty-nine dollars received in June. The account closes the 7th of July.

He produces also a statement of the cargo of the ship Barnstable, dated custom-house, Monterey, May 16, 1846, in the handwriting of Diaz. Page 100.

4. From the testimony of Rafael Pinto, who states that when he left Monterey, about the 1st of May, 1846, in company with De La Guerra, to go to Los Angeles, Diaz was at the custom-house in Monterey, and he produces an order dated Monterey, May 16, in which Diaz is appointed receptor at San Francisco during the absence of witness at Los Angeles. Page 106.

5. From the testimony of J. Rodriguez, who states that, from the 22d of April, A. D. 1846, when the brig Eufemia entered her cargo at the custom-house in Monterey, until the 16th of May, when the entry of the ship Barnstable was complete, Diaz was at the custom-house assisting about those vessels;

and the evidence of the witness is fortified by reference to documents and written dates. Page 115.

6. From the testimony of Fernandez, who states that Diaz came to San Francisco about the middle of May, 1846, as receptor in the absence of Pinto, and remained about two weeks. Page 124.

7. From the testimony of Jose Chaves, who swears positively that Diaz was in Monterey in the early part of May, and describes his connection with the entry of the Barnstable in such a way as to make his evidence reliable. Page 132.

This is a brief abstract of the depositions bearing on the date of the grant.

Manifestly, the witnesses for appellant and respondent contradict each other, but the preponderance and all the probabilities of truth are on the side of respondent.

All the documentary evidence, besides the title papers in question, produced by appellant, is a private correspondence that might have been written at any time between two of the witnesses, one of the parties to which, by his own testimony, is guilty of falsehood or fraud.

Some effort is made to destroy the force of the evidence furnished by the monthly balance-sheet, dated at Monterey, May 1, and in the handwriting of Gomez, by suggesting that a rough copy without date is found in the handwriting of Hartnell, and also by claiming that the account was transmitted by Abrego to the governor after some time from its date; but there is nothing to show when or for what purpose this rough and imperfect draft was made, and its subsequent transmission proves nothing to the point.

That written by Diaz was, beyond question, the orignal perfect account for April, stated, and the balance struck on the day when it bears date.

Diaz was undeniably in Monterey on the 16th of May, as appears from an alphabetical statement of the cargo of the Barnstable of that date in his handwriting, and also from a written appointment of that date, which he received from Hartnell, as receptor at San Francisco. Moreover, it appears that he was credited with the full amount of his wages for the months of April and May.

Is it probable that Diaz was in Los Angeles on the 6th, and busy at work in the custom-house at Monterey at some time before the 16th?

Why should Diaz and Gomez, whose business and duty as officials in the custom-house at Monterey required them to be there, be together on the 6th of May, some seven or ten days' travel, away at Los Angeles? There is not the slightest evidence of their absence from the custom-house or of their journeyings.

It is said that there was no motive for antedating the grant in this case.

The fact is that a great number of grants were made by Pico in July and August, and dated prior to the 7th of July, A. D. 1846. Page 61.

Motives that would induce Pico to antedate and alter other grants would influence him to make this.

This grant was void for uncertainty.

There was no occupation by the claimant, prior or subsequent to the grant, to indicate the location or extent of the grant.

The following are the various descriptions in the appellant's evidences of title—

1. Andrade's petition:

"A piece of land in the ex-mission of San Francisco, in front of the establishment, *where the orchard used to be*, (the trees of which no longer exist,) which land may have an extent of six hundred varas, as far as the tannery."

2. Decree of concession:

"A tract of six hundred varas of cultivated land, in the ex-mission of San Francisco, lying in front of the establishment of the same, which cultivated land is the same on *which hereafter existed an orchard of fruit-trees, and which extends as far as the tannery.*"

3. Grant:

"A tract of land, six hundred varas square, situated in front of the mission of San Francisco de Asis, *embracing from the orchard to a point beyond the tannery.*"

In the third subdivision of the grant, it is described as follows:

"The land of which donation is made, six hundred varas square, and is that *which used to be occupied by the mission of San Francisco as an orchard, and by a tannery.*"

4. Copy of grant:

"A tract of land, six hundred varas square, situated in front of the mission of San Francisco de Asis, *embracing from the orchard as far as beyond the tannery.*"

In the third subdivision of the copy of the grant it is described as follows:

"The land of which donation is made, is of the extent of six hundred varas square, and is the same which has *heretofore been occupied by the mission of San Francisco as an orchard, which extended as far as the tannery.*"

The petition by which this suit is commenced describes it as a "tract of land in front of the mission-building of San Francisco de Asis or Dolores, in the county of San Francisco, and containing six hundred varas square, *measuring from and including the huerta or garden of said mission, to beyond the tan-yard* of the same, or till the said quantity of six hundred varas be completed."

These conflicting descriptions render it impossible to locate the grant with any certainty, and savor strongly of fraud.

It will be noticed that the borrador was originally written so as to include the orchard, but afterwards altered by Diaz, so as to exclude it.

All the circumstances of the grant show haste, irregularity, and fraud. There was no *diseno* annexed to the petition, no order of reference, no *informe*, no approval by the departmental assembly. Nor did the petition come to the Governor through the prefect, as required by the order of Alvarado and Pico, page 53. These are fatal objections to the title. United States *vs.* Knight, 1 Black, 227.

There was no performance of the conditions of the grant.

It was not enclosed or cultivated by appellant; no judicial possession was ever delivered to him, nor were the boundaries of the grant marked out with proper landmarks.

There is no admissible evidence except the paper-title produced by appellant, to show that he claimed the land, until the 9th of March, 1852, when he presented his petition to the board of land commissioners.

Other persons occupied the land at the date of the grant, and have since held it, claiming adversely to appellant. Page 57.

There are no equities to support the claim. Under these circumstances, the claim ought not to be confirmed. U. S. *vs.* Cambuston, 20 Howard, 59; Fuentes *vs.* U. S., 22 Howard, 443; U. S. *vs.* Pico, 23 Howard, 321; U. S. *vs.* Bolton, 23 Howard, 341; U. S. *vs.* Suco, 23 Howard, 515.

GEO. H. WILLIAMS,
Counsel for Respondent.